



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: McSwiggan v Zamirski, 2026 ONLTB 12166

Date: 2026-02-05

File Number: LTB-L-042827-25-VO-RV

In the matter of: UNIT B, 33 FRANK ST
WASAGA BEACH ON L9Z1P9

Between: Matthew McSwiggan Landlord

And

Mark Zamirski Tenant

REVIEW ORDER

Matthew McSwiggan (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Zamirski (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by consent order LTB-L-042827-25, issued on August 12, 2025.

On September 26, 2025, the Tenant filed a motion to set aside order LTB-L-042827-25 because before the eviction was enforced, the Tenant paid the amount required under subsection 74(11) of the *Residential Tenancies Act, 2006* (the 'Act') to void the order.

On October 30, 2025, the Tenant's motion to void was scheduled but the hearing was adjourned to provide the Tenant with time to confirm the details of the wire transfer to the Landlord. The matter was scheduled to return before the Member on November 21, 2025.

On November 21, 2025, only the Landlord and the Landlord's Legal Representative, Kimberley Teel, attending the hearing.

The Tenant's motion to void the order was resolved by order LTB-L-042827-25-VO, issued on November 27, 2025.

On December 25, 2025, the Tenant requested a review of the order and that the order be stayed until the motion is resolved.

On December 29, 2025 interim order LTB-L-042827-25-RV-IN was issued, staying the order issued on November 27, 2025.

This request for review was heard by videoconference on January 22, 2026.

The Landlord, the Landlord's Legal Representative, Kimberley Teel, the Tenant, and the Tenant's Representative, James Moak, attended the hearing. William Gilmour attended as a witness for the Tenant.

Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding.
2. In the request for review, the Tenant asserts that neither himself nor his representative received the Notice of Hearing for the hearing scheduled on November 21, 2025 and therefore did not receive the login information for the videoconference.
3. The Tenant's representative submitted that although Member Liu scheduled the return date of the motion for November 21, 2025 at the prior hearing on October 30, 2025, neither he nor the Tenant received the Notice of Hearing for the November 21, 2025 hearing.
4. The Tenant's representative stated that although he understood from the October 30, 2025 hearing that the matter would return on November 21, 2025, he expected that a Notice of Hearing would be issued to both himself and the Tenant. When no notice was received, he assumed that the November 21, 2025 date had not been scheduled as discussed and awaited a new Notice of Hearing. He acknowledged that he did not check the Tribunals Ontario Portal ('TOP') for any information regarding the November 21, 2025 hearing. He further conceded that he was not available on November 21, 2025, as he had a matter scheduled in the Small Claims Court. I note that Mr. Moak did not access the file in TOP until December 29, 2025 despite attending the original hearing held on August 11, 2025.
5. The Tenant's witness, William Gilmour, a lawyer, testified that he is not the representative of record for the Tenant. He stated that although he prepared the request for review and the related documents, he did so only to assist Mr. Moak with the preparation of the materials and was not acting as the Tenant's representative. He further testified that his sole involvement in the matter was facilitating the funds required by the Tenant to void the order.
6. During the hearing, the Board's record was reviewed, including the Tenant's profile and the email containing the Notice of Hearing. The Tenant's profile in TOP shows that on September 26, 2025, Mr. Gilmour accessed the file, created a personal login, and changed the Tenant's email address to his own, bill@wgilmour.ca. The original email address on file, mark@sivantis.ca, belonged to the Tenant. Mr. Gilmour also consented to emails from the LTB while accessing TOP.
7. The Board's record also shows that the Notice of Hearing for the November 21, 2025 proceeding was emailed by the Board to the Landlord, the Landlord's legal representative, and Mr. Gilmour. Although Mr. Gilmour was advised that the Notice of Hearing had been sent to him on October 31, 2025, he denied receiving it and stated that, as he was not the representative of record, he would not have been expecting or monitoring any communications from the LTB.
8. The Landlord's representative submitted that the Landlord opposes the request for review. She stated that the Tenant's representative was fully aware that the hearing had been scheduled for November 21, 2025, and that at no time did Mr. Moak contact her office regarding the Notice of Hearing or the login information. She further submitted that on the day of the hearing she attempted to reach Mr. Moak by both email and telephone to remind him that his attendance was required, but she received no response.

9. Based on the evidence before the Board and the Board's record, I find that the Tenant was reasonably able to participate at the November 21, 2025 hearing but for lack of diligence on the parts of himself, his representative, and his witness, he did not attend the hearing.
10. A party to a Board application is required to exercise reasonable diligence to become aware of, and to attend, a Board hearing: *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (Div. Ct.) (CanLII) [*Berezovs'ka*]. In that decision, the Divisional Court ruled, at paragraph 8:

Lack of due diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear. In other words, it was not an error in law for the Review Board to find that lack of diligence constituted a reason not to grant the landlord a rehearing.

11. In the present case, the Tenant and the Tenant's representative participated in both the first and second hearings and were aware that the matter had been scheduled for November 21, 2025. There is no evidence on the record indicating that the hearing would not proceed as scheduled. The Tenant's witness had access to TOP and uploaded documents relating to both the motion to void the order and the present request for review. Although Mr. Gilmour maintained that he is not the representative of record for the Tenant, he inserted himself into the proceeding by accessing the file and uploading documents. He deliberately changed the Tenant's email address to his own and consented to receiving Board communications. The Board issued the Notice of Hearing and sent it to Mr. Gilmour based on his own request.
12. The Board's record does not contain any indication that correspondence sent to Mr. Gilmour was returned. On a balance of probabilities, the Tenant's representative's lack of communication with both Mr. Gilmour and the Tenant, combined with his failure to access the file in TOP, reflects a lack of due diligence on his part. The Tenant and the Tenant's representative were aware of the scheduled hearing date, had access to the portal as a result of Mr. Gilmour's actions, and could have taken steps to inquire about the Notice of Hearing for November 21, 2025.
13. Give the above, I am satisfied that the Tenant was reasonably able to participate at the hearing. The Tenant's lack of due diligence or that of his representative and witness is not good cause to grant the review request.

It is ordered that:

1. The request to review order LTB-L-042827-25 issued on November 27, 2025 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on December 29, 2025 is cancelled. The stay of order LTB-L-042827-25 is lifted immediately.

February 5, 2026
Date Issued

Susan Priest
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.