



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

File Number: LTB-T-087872-24-RV

In the matter of: Upper, 208A ARLINGTON CRES
LONDON ON N5Z3E1

Between: Desmond McCollin Tenant

And

Douglas Morton Landlord

Review Order

Desmond McCollin (the 'Tenant') applied for an order determining that Douglas Morton (the 'Landlord'):

- did not give the Tenant 72 hours to remove their property from the rental unit or from some place close to the rental unit after the Sheriff evicted the Tenant.

This application was resolved by order LTB-T-087872-24 issued on October 20, 2025.

On November 13, 2025, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On November 14, 2025, interim order LTB-T-087872-24-RV-IN was issued, staying the order issued on October 20, 2025.

This request was heard by videoconference on January 26, 2026.

The Tenant's Legal Representative, Kristina Mae Jennings the Tenant, the Landlord's Legal Representative, Timothy Ellis, and the Landlord, attended the hearing.

Determinations:

1. In this request, the Tenant alleges that they were not reasonably able to participate in the proceeding and that there was a serious error in the proceeding as a request for an adjournment was unreasonably denied.
2. At the hearing, the Tenant's Legal Representative submitted that she reviewed emails between January and August 2025 and found several attempts to contact the Tenant without success. She submitted that they were not aware that the Tenant had fallen ill as

he had not attempted to contact them. She also submitted that in September 2025 a skip trace was implemented and the Tenant's employer, hospitals, and jails were contacted. She further submitted that they had found an obituary in the same name as the Tenant but was unable to confirm if it was him.

3. She submitted that there was some confusion as to the status of the Tenant at the time of the last hearing due to lack of contact from the Tenant and the obituary that was found, so a request to adjourn would not have been unreasonable or prejudice the Landlord. She also submitted that it was the first adjournment request for this matter and they were just seeking some additional time to locate the Tenant.
4. She further submitted that when they did gain contact with the Tenant, they discovered that his phone was disconnected. As well, she submitted that they have since found out that the Tenant was blind during the time of the service of the Notice of Hearing for the last hearing date.
5. She submitted that the Tenant was awaiting eye surgery and in support of this, she provided a copy of his letter of an appointment dated August 26, 2025 into evidence (DOC-6790578pg13). She also provided a copy of the Tenant's vision report completed on September 3, 2025 into evidence (DOC-6790578pg14) and a copy of instructions (undated) the Tenant received to reinstate his driver's license after the surgery into evidence (DOC-6790578pg15). Additionally, in support of the Tenant's sight issues at the time, she submitted a copy of his medication schedule which she asserted was completed by the Tenant's doctor into evidence (DOC-6790578pg18).
6. The Landlord's Legal Representative submitted that the Notice of Hearing for the prior hearing date was mailed on August 15, 2025. He also submitted that the documents provided by the Tenant do not support a finding that the Tenant was blind and in fact the vision report acknowledge a rate of 20/25 in his right eye. The Landlord's Legal Representative further submitted that the prior hearing took place on October 9, 2025 which was some time after the Tenant's eye appointment on September 3, 2025 and there was no evidence presented that the Tenant was not able to participate at the hearing.
7. In fact, the Landlord's Legal Representative submitted that the Tenant reached out to his legal representative just two hours after the hearing concluded on October 9, 2025, which he submitted was quite a coincidence if he was incapacitated. The Landlord's Legal Representative submitted that the Tenant was avoiding his own legal representative by choice and the evidence and submissions show no reason why the Tenant could not have participate in the hearing on October 9, 2025.
8. Subsection 209(2) of the *Residential Tenancies Act, 2006* (the 'Act') permits the LTB to review orders on the basis that a party was not reasonably able to participate in the proceeding. Guideline 8 of the Guidelines provides that the request must provide a detailed explanation why the requestor was unable to participate in the proceeding **and** satisfy the LTB that they genuinely intended to participate. The LTB **will** refuse requests where the requestor's absence was the result of negligence or it finds no reasonable explanation for the failure to attend (**My Emphasis**).
9. In [*Q Res IV Operating GP Inc. v. Berezovs'ka, 2017 ONSC 5541*](#) (CanLII), the Divisional Court stated that "[I]f parties are not diligent in dealing with legal proceedings then they

cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely cost-effective and final orders”

10. Based on the evidence and submissions before me, I was satisfied that the Tenant was reasonably able to participate in the proceeding. The LTB’s record confirmed that the Notice of Hearing was directly served on the Tenant. There was no dispute that the Tenant failed to contact his legal representative for a significant period of time. The Tenant did not establish that he genuinely intended to participate in these proceedings.
11. The Tenant made no attempts to contact his legal representative for a period of over ten months (January 2025 to October 2025). While I accept that the Tenant had eye surgery in and around September 2025, there was no evidence that the Tenant was blind at that time or at the time of the prior scheduled hearing date or that his condition prevented him from providing instructions to his legal representative or attending the hearing as scheduled. I find it more likely than not that the Tenant only had cataract surgery on his left eye given the findings of the vision report submitted into evidence that his right eye’s vision was 20/25 and that he was also requesting to reinstate his driver’s license.
12. Additionally, I was satisfied that the Tenant was able to read documents/notices given to him or at least had someone assisting him with reading letters during the time of his cataract issues. The Tenant’s eye appointment letter was more likely than not mailed to him given that the appointment letter confirmed that if he needed to cancel/change the appointment for him to call them and they would send a new appointment letter in the mail. The Tenant did not miss this appointment.
13. As well, the process for reinstating his driver’s license with the MTO was in writing and provided a series of steps to be taken online. There was no evidence that this was an issue for the Tenant. And finally, a copy of the Tenant’s medication schedule provided into evidence was a weekly chart for five weeks wherein the time drops were use was filled in by hand. The Tenant’s Legal Representative asserted that the Tenant’s doctor completed this portion, however I find it more likely than not this chart was completed by the Tenant or at least someone with him who was present four times a day was able to fill out this chart by hand.
14. The Tenant’s Legal Representative’s submissions for an adjournment were presented at the prior hearing and have not changed. The original Hearing Member denied the adjournment request because the Tenant’s Legal Representative had not received any instructions from the Tenant since January 2025 despite numerous efforts to contact the Tenant and the Member was satisfied that the Tenant had received the Notice of Hearing and simply failed to attend. Given these undisputed circumstances, I was not satisfied that the denial of an adjournment at the prior hearing was unreasonable. I was also not satisfied that an adjournment would not be prejudicial to the Landlord. An adjournment would have prejudiced the Landlord given that they would have to attend another hearing and would have to pay their Legal Representative for another hearing attendance.
15. Consequently, the Tenant’s review request is denied.

It is ordered that:

1. The request to review order LTB-T-087872-24 issued on October 20, 2025 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on November 14, 2025 is cancelled. The stay of order LTB-T-087872-24 is lifted immediately.

February 18, 2026
Date Issued

Lisa Del Vecchio
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.