



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

Citation: EGAN v Lewis Street Inc., 2026 ONLTB 13737

Date: 2026-02-10

File Number: LTB-T-062195-24-RV

In the matter of: 30 LEWIS ST
TORONTO ON M4M2H3

Between: Alexandra Egan
David Stevens
Tenants

And

Lewis Street Inc.
Landlord

Review Order

Alexandra Egan and David Stevens (the 'Tenants') applied for an order determining that Lewis Street Inc. (the 'Landlord') :

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household (T2 Application); and
- failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (T6 Application).

This application was resolved by order LTB-T-062195-24 issued on January 7, 2026.

On February 6, 2026, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this hearing.

Determinations:

1. The order under review dismisses the Tenants' T2 and T6 applications that were based upon the presence of mold in the rental unit.
2. The Tenants submit they were not reasonably able to participate in the hearing as a result of a breach of procedural fairness. The review request also claims the order contains serious errors of law and unreasonable findings of fact.

Not Reasonably Able to Participate and Procedural Fairness

3. The Tenants submit they were not meaningfully able to participate in the hearing because despite the Member agreeing to their request to speak with Tenant Duty Counsel, they did not have an opportunity to do so before the matter was heard. The Tenants submit the Member proceeded to hear the matter without confirming whether the Tenants wished to proceed without having spoken to duty counsel. The Tenants claim this constitutes a breach of procedural fairness.
4. While Tenant Duty Counsel often attends various hearing blocks to provide Tenants free summary legal advice, this is not always the case. In addition, the Notice of Hearing sent to the Tenants advises them to seek legal advice before the hearing and provides clear instructions on how to do so. While Duty Counsel for the Tenants' region did not appear before the matter was called at 9:38 a.m., the Member was not required to delay the scheduled Board hearing.
5. In addition, the hearing recording does not show the Tenants made any objection to proceeding with their applications when the Member called the matter. Nothing in the recording shows that the Tenants raised this issue with the Member at any time during the hearing or made any submissions the hearing was procedurally unfair.
6. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807, the Divisional Court affirmed, at paragraph 11, that "it is incumbent on a party [who claims they were incapable of participating in the hearing] to raise the issue with the tribunal, or for there to be a basis on which the claim of incapability is grounded objectively in events at the hearing".
7. In *Sutton v. Patterson and Morrow*, 2021 ONSC 1403, the Divisional Court at paragraph 6 affirmed that a party who has a procedural fairness concern is obligated to make their objections known, not wait until the appeal to raise their fairness concerns.
8. The hearing recording and the order shows the Tenants were aware of the issues to be determined and exercised their right to address those issue over the course of an approximately four-hour hearing. The Tenants testified, submitted significant amounts of evidence, cross examined the Landlord's Agent and made submissions. The Tenants fully participated in the hearing and the recording shows the Tenants were afforded procedural fairness in accordance with section 183 of the Act and made no assertions to the contrary. As such, this ground for review is without merit.

Serious Error

Incorrect Legal Test

9. The Tenants submit the Member seriously erred by failing to apply the correct legal test when determining the T2 and T6 applications.
10. While paragraph 2 of the order under review does state the key issue in this application is whether the Landlord responded reasonably, it does not state, nor does the order show, this was the only factor the Member considered when determining the matters.

11. Paragraph 4 of the order shows the Member was aware of the binding decision from the Ontario Court of Appeal in *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477 which requires the Board to consider the entirety of the factual situation and take a contextual approach when determining whether there was a breach of a landlord's maintenance obligations.
12. The order also points out that the Court in *Onyskiw* rejected the position that a landlord is automatically in breach of its maintenance obligations as soon as an issue occurs. At paragraph 59 of *Onyskiw*, the court states:

The tenants' position that the landlord is automatically in breach of its statutory obligation to maintain and repair even while something is being repaired also offends the legal maxim *lex non cogit ad impossibilia*: that the legislature does not intend compliance where, for all practical purposes, it is impossible.

13. Accordingly, the Member was not required to make findings with respect to the ongoing status of the unit during the relevant period, particularly since it was not disputed mold was present in the unit, that remediation was required, being planned and then carried out.
14. The order shows the presiding Member considered the nature of the mold issue, whether the Landlord knew or should have known about the mold before the Tenants reported it on August 16, 2023, the Landlord's response, including providing alternative accommodations to the Tenants while mold remediation took place, that it took two months from the notification date to resolve the mold issue and the circumstances faced by the Tenants.
15. For example, paragraph 5 of the order shows the Member considered the Tenants' position that the Landlord's should have been aware of mold in the unit since February 2023. Paragraph 6 confirms the Member considered the Tenants' evidence concerning their position that the Landlord had not responded reasonably, the health circumstances they faced resulting from the mold and the unpredictable nature of their living accommodations at the time, including living with their family and the alternate accommodations provided to them by the Landlord while remediation work took place.
16. The order is not meant to be a transcript of the four-hour long hearing and the Member is not required to recite every piece of evidence that was presented or address every argument made by the parties. It is clear from the order and the hearing recording that the Member did not limit her consideration only to the Landlord's response to the presence of mold when determining the applications and that she did take a contextual approach required by *Onyskiw*.
17. This contextual approach also applies to T2 applications where the allegations overlap with section 20(1) of the Act. Paragraph 56 of *Onyskiw* states:

To interpret s. 20(1) as the tenants propose would result in an interpretation that places the provisions of s. 20(1) and s. 22 in conflict or disharmony with one

another and disregard the intent of the legislature that where, as here, there is an overlap, both provisions should apply. The tenants' reading of the RTA does not result in the legislation functioning as an internally consistent whole.

18. Both applications in this case contain the same allegations and they are with respect to the presence of mold in the rental unit. The Court in *Onyskiw* found that the legislature intended both sections 20(1) and section 22 of the Act apply where the issue raised overlaps as they do here. As such, it was correct for the Member to take the required contextual approach when determining both applications. Having not found that the Landlord breached section 20(1) of the Act, the applications were both dismissed. Given the Tenants T2 application, as filed, could not succeed without a breach of section 20(1) of the Act, the Member was not required to restate her analysis when dismissing the T2 application under section 22 of the Act.
19. In my view, the presiding Member did apply the correct legal test when determining the applications and the order does not contain an error of law. This ground for review is therefore denied.

Shifting the Evidentiary Burden

20. The Tenants also submit the Member improperly required the Tenants to prove there was ongoing noncompliance on the part of the Landlord without requiring the Landlord to demonstrate the rental unit met health and safety standards during remediation. The Tenants further submit that once a serious maintenance issue is established, the Landlord bears an ongoing obligation to demonstrate compliance with section 20(1) of the Act.
21. As stated earlier, *Onyskiw* sets out that a landlord is not automatically in breach of section 20(1) of the Act the moment an issue arises. There is an inherent time requirement in diagnosing an issue, determining an appropriate course of action and implementing the response. The Landlord is not perpetually in breach of section 20(1) while repairs are being made.
22. Nothing in the order convinces me the Member put the Tenants to an improper evidentiary burden in deciding the applications. The order shows the Member considered the evidence concerning the Landlord's response to the mold issue and found it was reasonable. The review request does not identify any area of the order that imposes an incorrect evidentiary burden on the Tenants. I am not convinced the Tenants have shown an error with respect to this ground and it is therefore denied.

Unreasonable Findings-Timelines

23. The Tenants submit the Member's finding that the Landlord responded reasonably was impacted by an incorrect timeline of entries, inspections and investigation following the initial report of mold by the Tenants on August 16, 2023.
24. The review request asserts the correct timeline, based on the evidence and testimony, is:

- a) August 16, 2023 the first mold inquiry report by the Tenants.
- b) August 21, 2023 the first entry by the property management.
- c) August 25, 2023 the second entry by a contractor crew. Area of visible concern cleared by this crew.
- d) August 29, 2023 the third entry by a contractor and the same that entered on August 25, 2023, wanting to see the area cleared.
- e) August 30, 2023 the fourth entry by the same contractor as on August 25 and 29, 2023.
- f) August 31, 2023 an ESG inspection was conducted.

25. The Tenants review request states their chronology is based on the evidence and testimony but does not identify if the testimony of the Landlord's Agent is taken into account. In any case, the timeline set out in paragraph 3 of the order is as follows:

- a) The Tenant first noticed mould in the rental unit in August 2023 and notified the Landlord on August 16, 2023.
- b) The Landlord acknowledged the Tenant's complaint on August 18, 2023, then arranged for various employees to inspect the rental unit on August 20, 25, and 30, 2023.
- c) On August 31, 2023, Environmental Services Group ('ESG') conducted a mould test.
- d) Remediation work began on September 26, 2023, and was completed on October 16, 2023. However, the washroom remained under construction.
- e) On October 20, 2023, the Tenant notified the Landlord of their intention to terminate the tenancy. The parties agreed to a termination date of October 31, 2023.

26. The Tenants' chronology omits the August 18, 2023 acknowledgement by the Landlord of the Tenants' August 16, 2023 complaint concerning the presence of mold. The hearing recording does show this was the Landlord's evidence and that it was not challenged by the Tenants during cross examination. As such, it was open to the Member to find this acknowledgement did take place on August 18, 2023 and that it was not disputed.

27. The other discrepancies the Tenants claim appears to be the difference between an entry on August 20, 2023 instead of August 21, 2023 and an additional entry by the Landlord's contractor on August 29, 2023 that the order does not mention. Even if the Member did err with respect to the August 20, 2023 date set out in the order and even if the Member failed to mention one additional attendance at the unit by the Landlord's

contractor on August 29, 2023, I am not convinced these amount to serious errors that are likely to have changed the Member's ultimate finding. In fact, an additional attendance by the Landlord's contractor at the unit is not in my view, evidence that would tend to show the Landlord's response was not timely as the Member concluded.

28. For these reasons, I am not satisfied the Tenants have shown there is a serious error in the order with respect to the timeline of events and this ground for review is denied.

Timing of the Remediation Work

29. The Tenants assert the Member mischaracterized the reason for the delay in remediation work beginning. The order finds the Landlord was narrowing contractor options and that they chose the contractor that could start the work soonest. The review request states the evidence was the Landlord initially intended to begin the remediation work on October 10, 2023 but only moved up the start date to September 26, 2023 after the Tenants complained about the delay.
30. That the Landlord was receptive to the Tenants' concerns with respect to delay and found a contractor that could start two weeks earlier does accord with the Member's findings. The Landlord did not refuse to move the start date of the work and instead they did choose the contractor that could start soonest. This is what the order finds and I am not convinced the Tenants have established the order is in error by concluding the Landlord's were proactive. They heard the Tenants concerns and acted upon those concerns.
31. Had the Landlord maintained their original plan instead of acting on the Tenants' concerns, the Member may have found differently but this is not what happened. The Member was entitled and obligated to assess the Landlord's response based on what actually happened and she did so. Even if the order had contained an analysis of this evidence, I am not convinced the outcome would have been different and I cannot conclude this is a serious error. Accordingly, this ground for review is denied.

Unreasonable Findings-Credible Warning Signs

32. The Tenants submit the Member's finding that the Landlord was not aware of the mold issue before the Tenants reported in on August 16, 2023, is incomplete because the issue was whether the Landlord acted reasonably in response to visible damage and repeated tenant concerns.
33. The Tenants raised this argument at the hearing and as stated, paragraph 5 of the order under review addresses this issue and shows the Member did not agree with the Tenants' assertion the Landlord knew or should have know there was mold in the rental uni.
34. The order provides sufficient reasons explaining why the presiding Member did not find a dated water stain on the ceiling amounts to convincing evidence the Landlord was aware of the presence of mold in the unit at a time before the Tenants notified them of it.

35. I note the recording does not show the Tenants provided evidence this water stain was fresh, growing or of such a nature that further reports were made to the Landlord before advising them of the presence of mold on August 16, 2023. The hearing recording shows the Landlord's Agent explained that the stain was from a roof leak that was repaired before the tenancy began and that no further issues were found at the time of the repair.
36. It was therefore reasonable for the Member to conclude, based on the evidence that was presented and in the absence of evidence of any additional complaints before August 16, 2023, that the Landlord was not aware and had no reason to suspect there was a presence of mold in the unit before the Tenants reported it to them. Reasonable findings, explained with adequate reasons are entitled to deference. While the Tenants clearly disagree with the Member's finding, the Board's review process is not an opportunity to reargue an issue in the hopes of achieving a different outcome.
37. For the reasons provided above, I find the Member considered relevant factors and applied the correct legal test when determining the applications. The order contains adequate reasons showing the Member considered the evidence presented and that the findings in the order are rationally connected to this evidence. The original hearing Member's findings of fact are therefore entitled to considerable deference. A request for review will not be granted simply because the reviewing adjudicator might have come to a different conclusion about the evidence.
38. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings or that the Tenants were not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-T-062195-24 issued on January 7, 2026 is denied. The order is confirmed and remains unchanged.

February 11, 2026
Date Issued

John Cashmore
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

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