



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

Citation: Marshall v Brandt, 2026 ONLTB 15135

Date: February 13, 2026

File Numbers: LTB-L-019179-22-RV, LTB-T-048502-22-RV & LTB-T-010624-23-RV

In the matter of: 1, 120 BEAVER STREET
THOROLD, ON L2V1B9

Between: Wendy Marshall Landlord

and

Brenda Brandt Tenants
Bruce Melanson
Sunni Metcalfe

WRITTEN REVIEW HEARING ORDER

Procedural History of Applications

On April 1, 2022, Brenda Brandt, Bruce Melanson, and Sunni Metcalfe (the ‘Tenants’) applied in a T2 application (LTB-T-048502-22), seeking an order determining that Wendy Marshall (the ‘Landlord’) entered the rental unit illegally; substantially interfered with the Tenants’ reasonable enjoyment of the rental unit or complex; harassed, coerced, obstructed, threatened or interfered with the Tenants; and withheld or interfered with vital services.

On October 6, 2022, the Tenants [now through their legal representative Curt Anderson (paralegal)] submitted a request to amend the T2 application, seeking numerous changes to the “Explaining your Reasons” section and remedies requested, among other things. A certificate of service was uploaded to the Tribunals Ontario Portal (TOP) on the same day as the request to amend was filed. The certificate of service stated Brittney Tessier served the Landlord with the Tenants’ request to amend T2 application by mail or Xpresspost to the last known address of the Landlord: 201 Ontario Street, Thorold, ON L2V1E3.

On February 2, 2023, the Tenants (through their legal representative), applied in a T6 application (LTB-T-010624-23), seeking an order determining that the Landlord has not repaired or maintained the rental unit or residential complex, or has not complied with health, safety, housing or maintenance standards.

On February 7, 2023 the Landlord requested that the 3 applications be combined. The Landlord also requested an accommodation in the L2 application, seeking a written hearing due to her auditory processing disorder.

On February 16, 2023, Vice Chair S. Henry issued interim order LTB-L-019179-22-IN only for the L2 application. The interim order cancelled the upcoming virtual L2 hearing scheduled for February 21, 2023, set out various deadlines for parties to object to the written hearing format, and for parties to submit their disclosure and evidence for the written L2 hearing. This interim order did not address the Landlord's request made on February 7, 2023 to have the 3 applications combined.

On September 19, 2023, Member A. Bruno issued interim order LTB-T-010624-23-IN / LTB-T-048502-22-IN / LTB-L-019179-22-IN, combining the 3 applications, setting new deadlines for parties to object to the written hearing format, and setting new disclosure deadlines for parties to serve their evidence on each other and the Board for the written hearing.

The applications were resolved by order LTB-L-019179-22, LTB-T-048502-22 & LTB-T-010624-23, issued by Member A. Bruno on February 16, 2024 (the 'Written Hearing Order'). The Written Hearing Order determined that the Tenants had not served any evidence to the Landlord or the Board by their submission deadline of October 10, 2023 nor by the time of the writing of the order. Therefore, the T2 and T6 applications were dismissed. The Written Hearing Order also dismissed the L2 application for defective notice and lack of particulars in the notice of termination.

On March 18, 2024, the Tenants' legal representative requested a review of the Written Hearing Order, claiming that the Tenants were not reasonably able to participate in the written T2/T6 proceeding.

On April 10, 2024, Member C. Aboussafy issued review interim order LTB-L-019179-22-RV-IN, LTB-T-048502-22-RV-IN & LTB-T-010624-23-RV-IN, directing the review to a written hearing. Since the request for review did not make any submissions that the hearing format should be changed, Member Aboussafy ordered the review to continue in the written format. Various deadlines were provided for the parties to object to the review written hearing format, and for disclosure deadlines for parties to server their evidence on each other and the Board for the written review hearing.

DETERMINATIONS:

1. As explained below, based on the evidence and submissions, I find that the Tenants have not proven on a balance of probabilities that they were not reasonably able to participate in the T2/T6 written hearing proceeding. Therefore, the request for review is denied.

Submissions and Evidence Considered for this Request for Review

2. After the review interim order LTB-L-019179-22-RV-IN, LTB-T-048502-22-RV-IN & LTB-T-010624-23-RV-IN was issued by Member Aboussafy on April 10, 2024, the LTB did not receive any objections from any party about the hearing format for the review being written. The objection deadline was May 1, 2024. As of the writing of this written review order, the LTB still has not received any objections from any party. Therefore, the review hearing was conducted in writing.

3. The Tenants' side were given a deadline of May 21, 2024 to serve on the Landlord and file with the Board the Tenants' evidence and submissions in support of the review request, as well as a certificate of service.
4. I find that the Tenants' legal representative met the service deadline, but failed to upload a certificate of service as ordered by paragraph 3 of Member Aboussafy's review interim order, which stated: *On or before **May 21, 2024**, the Tenants shall serve on the Landlord and file with the Board the Tenants' evidence and submissions in support of the review request, as well as a certificate of service.*
5. I note that Rule 3.8 of the LTB's *Rules of Procedure* states: *Where required by these Rules or the LTB directs, service of a document must be confirmed by completing a Certificate of Service signed by the person who served the document and filing it with the LTB within 5 days of service.*
6. Despite there being no certificate of service, I find there would be no prejudice to allow and consider the uploads made by the Tenant's legal representative on May 21, 2024. I note that in addition to emailing the documents to the LTB, the Tenants' representative cc'd the Landlord's email address. The LTB's records indicate the Landlord's email address is current and has been used for emails from the Board. Therefore, I find it more likely than not that the Tenant representative's disclosure came to the attention of the Landlord by email. I considered the following evidence and submissions from the Tenant's legal representative for the review written hearing:
 - In the T6 file, the Tenant's legal representative's email dated May 21, 2024 at 6:15pm attaching various links including:
 - *Inspection with police escort April 2nd 2022.MOV* (video)
 - *Landlord attending without notice April 10, 2022.MOV* (video)
 - *Landlord attending without notice March 30, 2022.MOV* (video)
 - *Landlord attending without notice March 27, 2022.MOV* (video)
 - *Tenants Evidence Brief* (41 page PDF document setting out 6 Tabs of various issues, pictures, and screenshots of messages)
 - *Discussion regarding no heat.MOV* (video)
 - In the T2 file, the Tenant's legal representative uploaded 4 documents on May 21, 2024 between 4:07pm and 4:18pm including:
 - *Landlord attending without notice April 10, 2022.MOV* (DOC-3375261) – nothing attached
 - *Landlord attending without notice April 10, 2022.MOV* (DOC-3375165) – nothing attached
 - *Landlord attending without notice April 10, 2022.MOV* (DOC-3375191) – nothing attached
 - *Landlord attending without notice April 10, 2022.MOV* (DOC-3375309) – 2 identical videos attached
7. I note the review interim order did not give any instructions which of the combined tenant application files required uploads for the review written hearing; therefore, I accept that the documents the Tenants intended to rely upon to support their request for review were the documents mentioned above from May 21, 2024 in both the T6 and T2 files.

8. I note the Landlord uploaded 21 documents in the L2 file on June 10, 2024 (there was no certificate of service showing whether these documents were also served on the Tenants as the review interim order directed in paragraph 4). The Landlord did not upload anything for the review written hearing in the T2 or T6 files.

Not Reasonably Able to Participate Not Proven

9. The Tenants' legal representative explained in the request for review:

Regarding matters LTB-T-048502-22 & LTB-T-010624-23

By order of the board, the matter was determined to be heard by written submissions. The LTB did not receive our submissions of the Tenants evidence, which were sent by our office via regular mail, on or around October 3, 2023. We were of the impression the evidence and submissions had been received and were under review and consideration by the board in support of the tenants applications. It was not until we received the order February 16, 2024, that it was revealed the board had never received our submissions. Therefore, without our written submissions being received, we were not able to reasonably participate in the hearing.

10. When I consider the submissions made by the Tenants' legal representative on May 21, 2024, there is nothing speaking to the issue of not being reasonably able to participate in the written hearing proceeding. It appears that rather than making submissions in support of the request to review, only the evidence to support the original T2/T6 application were uploaded.
11. Consequently, to support the request to review, I only had the information stated by the Tenants' legal representative in the request for review to consider, in determining whether or not the Tenants were reasonably able to participate in the written hearing proceeding.
12. There were no details provided or submissions made regarding who at the representative's office did the serving on October 3, 2023, how such documents were sent to the Landlord, or any certificate of service proving either service.
13. I note the only certificate of service in any of the 3 files, is the Tenants' representative's request to amend the T2 application submitted October 6, 2022, with a certificate signed by Brittney Tessier. It is reasonable to conclude from these documents that the Tenants and their legal representative knew or ought to have known how to complete and submit a certificate of service.
14. The Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The case law from Divisional Court generally instructs the Board that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly, to ensure natural justice, and where a party shows a genuine intent to participate in a hearing but was prevented from doing so, they should be entitled to a hearing through the review process. A party's genuine intent to participate must be borne out by the evidence which clearly demonstrates the party's intent to participate in the hearing.

15. In *Kathryn King-Winton v. Doverhold Investments* 2008 CANLII 60708 (ON SCDC), the Divisional Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
16. When I consider the evidence, I do not find the Tenants demonstrated a genuine intention to participate in the written proceedings.
17. The request to review was vague in its explanation that on or around October 3, 2023, the Tenants' submissions for the written hearing were mailed to the Board. There is nothing to corroborate this or expand on the details about the Tenants' genuine intention to participate in the written proceedings. The content of the actual evidence they mailed that day was not included or described, nor was the person doing the serving, nor a certificate of service to corroborate the mailing.
18. Even if there was a certificate of service from a specific person at the office who mailed the LTB with the Tenants' written submissions on or around October 3, 2023, this would still not address the issue that there is no proof the Landlord was served with the disclosure as ordered by the interim order. Therefore, the outcome of the written hearing order would not have changed. It is likely the T2/T6 would have been dismissed in any event due to the lack of service on the Landlord based on procedural unfairness.
19. On a balance of probabilities, I find the Tenants have not proven they mailed the Board with any written hearing submissions in October 2023, nor have they shown the Landlord was also served with such documents.
20. The Tenants claimed they were not reasonably able to participate, but they submitted no evidence on this written review to substantiate their claim.
21. The Tenants were represented by a legal representative since 2022 and they demonstrated they knew how to serve the Board and Landlord in prior instances, where they had uploaded the required certificate of service for the request to amend.
22. There was no reasonable explanation provided why there were no review written hearing submissions (other than uploading the evidence intended for the original T2/T6 written hearings), nor the lack of evidence speaking to the service issues. There was no request to extend the deadline.
23. I would expect the parties to take more consideration in these proceedings, precisely because the format of proceedings was changed to written. The proof of service is an important element to establish in a written format, to ensure procedural fairness for all parties.
24. The review process is not an opportunity for a party to have a do-over of a hearing. The requestor claiming that they were not reasonably able to participate, is required to show they had a genuine intention to participate in the proceedings but were prevented from doing so. I find in this case, rather than showing a genuine intention or prevention from participating, there was a lack of due diligence with respect to the written hearing proceeding.
25. As a result, the Tenants' request to review the Written Hearing Order is denied.

It is ordered that:

26. The request to review the Written Hearing Order LTB-L-019179-22, LTB-T-048502-22 & LTB-T-010624-23, issued on February 16, 2024 is denied. The order is confirmed and remains unchanged.

February 13, 2026

Date Issued

Michelle Tan

Vice Chair, 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.