



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

Citation: Imam v Cruz and Boni, 2026 ONLTB 16201

Date: 2026-02-23

File Number: LTB-L-058502-25-RV

LTB-L-059454-25-RV

In the matter of: Basement, 21 TILLBROOK CRT
Scarborough ON M1B1N5

And

Upstairs Main Floor, 21 TILLBROOK CRT
Scarborough ON M1B1N5

Between: Syed Asghar Imam Landlord

And

Michael Cruz Tenant (Basement)

And

Bernadett Boni Tenants (Upstairs
Csaba Bader Main Floor)

Review Order

Syed Asghar Imam (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Cruz because the Landlord in good faith requires possession of the basement rental unit for the purpose of residential occupation for at least one year (LTB-L-058502-25).

The Landlord also applied for an order to terminate the tenancy and evict Bernadett Boni and Csaba Bader because the Landlord in good faith requires possession of the main floor rental unit for the purpose of residential occupation for at least one year (LTB-L-059454-25).

The first application was resolved by order LTB-L-058502-25, issued on November 10, 2025. The second application was resolved by order LTB-L-059454-25, issued on December 23, 2025.

On December 30, 2025, the Tenant Bernadette Boni requested a review of order LTB-L-059454-25. On January 5, 2026, the Landlord and Tenant Board (LTB) initiated a review of order LTB-L-058502-25.

The reviews were heard together by videoconference on February 11, 2026.

The Landlord, the Landlord's representative Mansi Parmar, and the Tenants Michael Cruz and Bernadett Boni attended the hearing.

Reasons:

1. These reviews arise because the Landlord and Tenant Board (LTB) made apparently conflicting findings of fact in two related applications for vacant possession of two different rental units. As a result, vacant possession was granted for the main floor unit but not for the basement unit. The parties request reviews on the basis that the inconsistent results constituted an error.
2. For the following reasons, I do not think that inconsistent findings of fact in different proceedings would necessarily give rise to a reviewable error. However, in the particular circumstances of this case, the fact that the basement application was unsuccessful is new evidence which could change the outcome of the main floor application. The review of the main floor decision will therefore be granted, and a new hearing of that application held.

Procedural history

3. These proceedings are about a house consisting of two rental units: a main floor and a basement. Michael Cruz rents the basement. Bernadett Boni and Csaba Bader rent the main floor.
4. The Landlord applied to terminate the tenancies in both units on the basis that he required possession of them for the purpose of his own residential occupation. He alleged that that he intended to live in the whole house with his family. To succeed in each application, the Landlord had to prove, on a balance of probabilities, that he genuinely intended to live in the unit for which the application was made.
5. The two applications were heard separately, before different Members. The application to terminate the tenancy in the basement was heard on October 22, 2025. The application to terminate the tenancy in the main floor was heard on October 27, 2025.
6. The issues and evidence in the two cases were very similar. In both cases, the Landlord testified that he had served notice to end the tenancy because he had decided to move into the whole house. In the basement proceeding, Mr. Cruz testified that prior to giving notice to end the tenancy for personal use, the Landlord had repeatedly told him that he intended to sell the house, and had pressured him to end the tenancy to facilitate a sale. In the main floor proceeding, Ms. Boni testified that the Landlord had repeatedly told her the same thing, and had pressured her in the same way. Both Tenants argued that the Landlord did not genuinely intend to move into the property, and was actually trying to evict them so that he could sell it more easily.
7. On November 10, 2025, Member Xiao issued her decision regarding the basement unit. She found that the Landlord had not proved his intention to occupy the house, and dismissed the application to evict Mr. Cruz. On December 23, 2025, Member Sivalingam

issued her decision regarding the main floor unit. She found that the Landlord had proved his intention to occupy the house, and granted the application to evict Ms. Boni.

8. Ms. Boni requested a review of the main floor decision, arguing that the discrepancy between the two decisions gives rise to a serious error. The LTB then initiated a review of the basement decision. The LTB directed that the two reviews be heard together to consider whether it had erred by failing to hear the two cases together in the first place, or alternatively, whether the disparate results gave rise to serious errors in one or both of the decisions.
9. The two reviews were heard before me on February 11, 2026.

Issues

10. Guideline 8 sets out the types of serious errors which can give rise to a review. In this case, there are four ways in which the LTB might have erred:
 - “A procedural error which raises issues of natural justice”: the LTB might have erred by hearing the two cases separately.
 - “An unreasonable finding of fact on a material issue”: one of the Members might have erred in their assessment of the evidence, resulting in two different decisions on nearly identical evidence;
 - “An error in law”: it might have been an error for the LTB to issue two decisions with conflicting findings of fact;
 - “New evidence which was unavailable at the time of the hearing”: the outcome of the main floor hearing might constitute new evidence which was not available at the time of the basement hearing, and vice-versa.
11. I will consider each possible error in turn.

Did the LTB hear the matters in a way that was procedurally unfair?

12. Clearly, it would have been preferable for a single Member to hear both applications together, and make a single decision after considering all the evidence in respect of both rental units.
13. The Landlord says that he intended that the two applications be heard together. He says that when he filed them, he indicated in the application forms that there were related applications. He thought that this would prompt the LTB to schedule the applications together.
14. I have reviewed the application forms, and I do not see anything on either of them indicating that there were related applications. It appears the Landlord is actually referring to the “previous N12 or N13 notices” section of the form, wherein he indicated that he had recently served N12 notices to end the tenancies of both units.
15. The purpose of the “previous N12 or N13 notices” section of the application form is to comply with section 71(3) of the *Residential Tenancies Act, 2006* (RTA), which requires

that applicant landlords disclose any N12 or N13 notices they have given in respect of any rental unit, in any property, for the past two years. Section 71(3) is a procedural protection for tenants to help identify cases where a landlord may have a history of giving improper notices. Its purpose is not to identify related applications so that they can be heard together.

16. In any case, the Landlord did not indicate that the two applications were related, and they were processed normally and scheduled individually. Upon receiving notice of two separate hearing dates, the Landlord could have filed a request to reschedule them to be heard together. He did not do so.
17. There is nothing in the RTA, or in the LTB's rules, requiring that related applications respecting different units be heard together. Nor is there any requirement that a landlord flag related applications so that they can be heard together. While it would have been preferable for the Landlord to do so in this case, I cannot conclude that his omission contravened any rule.
18. The Tenants also could have asked that the matters be rescheduled to be heard together, but did not do so.
19. I do not find that it was procedurally unfair for the two applications to be heard separately. The parties did not request that they be heard together. Each of the two hearings was procedurally fair.

Did one of the Members err in their assessment of the evidence?

20. The content of the evidence before the two Members was nearly identical. The Tenants testified that the Landlord had, over the course of several years, told them that he wanted to sell the house and asked them to move out. The Landlord testified that he had intended to sell the house, but changed his mind and decided to live there instead.
21. Member Xiao found that the chronology of events gave rise to an inference that the Landlord's real intention might have been to obtain vacant possession to facilitate a sale of the house. She found the inference to be sufficient to undermine the Landlord's credibility, such that his testimony was not sufficient to prove, on a balance of probabilities, that he genuinely intended to live in the house.
22. Member Sivalingam, on the other hand, found the Landlord's explanation of the chronology to be credible. She found that he had proved, on a balance of probabilities, that he genuinely intended to live in the house.
23. Both findings were available to the Members on the evidence before them. There is no error in one Member finding certain testimony to be credible, and another Member finding otherwise. It is the nature of credibility assessment that different people may assess evidence differently.
24. It is not my role, on review, to substitute my own assessment of the evidence. The Members who heard evidence were in the best position to assess it. There is no error in the way that either Member assessed the evidence, and I do not find that either of them

erred, even though they arrived at different conclusions. Both conclusions were rationally connected to the evidence.

Do the disparate results give rise to a legal error?

25. The law seeks to avoid contradictory results. The doctrine issue estoppel holds that, when a legal proceeding has resulted in a final decision on a question of fact, parties can be barred from seeking a different finding on the same question in a subsequent proceeding.
26. However, issue estoppel only applies where the parties to the prior and subsequent proceedings are the same. In the present case, the parties to the two proceedings were not the same. The proceedings involved the same Landlord, but different Tenants and different rental units. Issue estoppel does not apply.
27. It is easy to see why issue estoppel does not apply when the parties are different. Ms. Boni defended the application against her on the basis that the Landlord's intention was not genuine. She was unsuccessful. There is nothing unfair about her being evicted after having had the opportunity to defend herself. However, if Mr. Cruz were bound by the finding made in Ms. Boni's proceeding, then he would be evicted without having had the opportunity to defend himself – a clearly unfair result. Both Tenants have the right to a full defense, and the fact that one's defense failed cannot bar the other from raising the same defense.
28. Since the two proceedings involved different parties, I know of no legal principle that would require Member Xiao to adopt Member Sivalingam's findings, or vice-versa.
29. Furthermore, the two findings are not actually contradictory. In one proceeding, the Member found that the Landlord genuinely intended to live in the house. In the other proceeding, the Member found that the Landlord had not proved that intention on a balance of probabilities. There is no contradiction in saying that the Landlord genuinely intends to live in the house, but did not, in one case, adduce evidence sufficient to prove it.
30. I therefore do not find that there is any legal error in the LTB having issued an eviction order in one proceeding, while finding, in the other proceeding, that the evidence was insufficient to support an eviction order.

Is there new evidence that was unavailable at the time of the hearings?

Legal test

31. Guideline 8 provides that a review may be granted where there is "new evidence which was unavailable at the time of the hearing and which is potentially determinative of one or more central issues in dispute."

Is there new evidence which was unavailable at the time of the hearings?

32. The decisions in both of these applications were issued after both applications had been heard. Neither Member had the benefit of knowing what the outcome of the other case

would be. It seems to me that, now that the outcomes are known, new evidence is available that was not available at the time of the hearings.

33. Specifically, the fact that an eviction order was not issued in respect of the basement unit is evidence which may be directly relevant to the question of whether the Landlord still genuinely intends to live in the house.

Is the new evidence potentially determinative of a central issue regarding the main floor unit?

34. On the evidence before her, Member Sivalingam found that the Landlord genuinely intended to move into the whole house and live there with his wife, his son, and his son's family. His intended occupation of the whole house included the main floor unit, so the Member found that he genuinely intended to live in the main floor unit.
35. The Member might not have made that finding if the outcome of the basement proceeding had been before her. She would likely have found that the Landlord and his family would not have been able to occupy the whole house, since the basement would remain tenanted. She would have needed to consider evidence as to whether the Landlord intended to nonetheless move into the main floor unit or to make some other arrangement. She might or might not have found that evidence to be credible.
36. The Landlord argues that nothing has changed because he will still be able to get vacant possession of the basement, by bringing a new proceeding against Mr. Cruz. A new proceeding might be barred by issue estoppel (*Alipour v Afshin*, 2025 ONLTB 3244). However, the Landlord might also obtain vacant possession of the basement unit in other ways, such as by reaching an agreement with Mr. Cruz. So it may be that the Landlord may eventually still be able to move into the whole house, but that outcome is not guaranteed.
37. At this point none of those questions have been considered, and no evidence on them has been heard. That is because, when the applications were heard, the parties did not know that the Landlord would not get an eviction order against the basement unit. Consequently, no evidence was adduced as to whether, if the basement Tenant were not evicted, the Landlord would still genuinely intend to move into the main floor unit.
38. To determine good faith, the LTB is required to consider not only the Landlord's intention at the time he served a notice of termination, but also any subsequent changes in circumstances that may impact the Landlord's intentions (*Elkins v. Van Wissen*, 2023 ONCA 789 (CanLII)). It is necessary to consider whether the Landlord still genuinely intends to move into the house now that he cannot, at least currently, also occupy the basement.
39. I have therefore concluded that the outcome of the basement proceeding constitutes relevant new evidence which was unavailable at the time of the main floor hearing, which was potentially determinative of a central issue in the main floor proceeding.
40. To put it another way, it would be unjust for Ms. Boni to be evicted from the main floor unit so that the Landlord can move in, when the Landlord might no longer be moving in in light of the outcome of the basement proceeding.

41. The review of the main floor decision will therefore be granted, and a new hearing of that application held. The LTB will thus be able to hear to totality of the evidence, including evidence regarding how the basement outcome may affect the Landlord's plans, to determine whether the Landlord still genuinely intends to move into the main floor.

Is the new evidence potentially determinative of a central issue regarding the basement unit?

42. On the other hand, I do not find that the outcome of the main floor proceeding is potentially determinative of any issue in the basement proceeding.
43. Member Xiao found that the Landlord had not proved, on a balance of probabilities, that he genuinely intended to move into the basement unit. The fact that the Landlord now has an order to evict the main floor tenant has no bearing on that outcome. The Landlord's evidence was always that he would evict the Tenants of both units. Member Xiao considered that evidence in reaching her conclusion.

Should the basement decision be reviewed anyway?

44. I have considered that it might be convenient to overturn both decisions and direct that both applications be reheard together, to ensure a consistent result. However, convenience is not one of the grounds for review set out in Guideline 8.
45. Parties have a right to finality. Absent any reviewable error, it would be unfair to Mr. Cruz to overturn the basement decision and require him to defend the same application a second time.
46. In other words, having found no error in the basement decision, and no new evidence that could affect the outcome, there is no basis on which I could overturn that decision. The review of the basement decision will therefore be denied

Conclusion

47. Both Members properly decided the applications before them on the evidence before them. There was no error in either decision. In the normal course, in my view, both decisions should be upheld even though they had different results.
48. However, as a result of the proceedings, there is now new evidence which was unavailable at the time of the main floor hearing and which is potentially determinative of the central issue raised in that application. The Landlord testified that he planned to move into the whole house. The Member did not have the benefit of knowing that the Landlord's plan would be thwarted when he failed to obtain vacant possession of the basement. That evidence only became available after the application had been heard.
49. The new evidence would not affect the outcome of the basement application, so that decision will be upheld. However, the new evidence might affect the outcome of the main floor application, so that decision will be overturned and a new hearing held.

It is ordered that:

1. The review of order LTB-L-058502-25, issued on November 10, 2025, is denied. The order is confirmed and remains unchanged.
2. The review of order LTB-L-059454-25, issued on December 23, 2025, is granted. The order is cancelled.
3. The LTB shall schedule a new hearing of application LTB-L-059454-25.
4. I am not seized.

February 23, 2026

Date Issued

Dale Whitmore

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.