



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

File Number: LTB-T-044484-25-RV

In the matter of: 45 SOUTH DR
ST CATHARINES ON L2R4V1

Between: Josh McDougall Tenant

And

Elaine Hrisovski Landlord

Review Order

Josh McDougall (the 'Tenant') applied for an order determining that Elaine Hrisovski (the 'Landlord'):

- entered the rental unit illegally.
- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.
- 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-044484-25 issued on January 20, 2026.

On January 22, 2026, the Tenant requested a review of the order.

On January 26, 2026, interim order LTB-T-044484-25-RV-IN was issued.

This application was heard by videoconference on February 19, 2026.

The Landlord's Legal Representative, Alishia Lavallie, and the Tenant's Legal Representative, Nicholas Klingenberg, attended the hearing.

Determinations:

Request to Review

1. On the basis of the submission made in the request, I am not satisfied that the Tenant was not reasonably able to participate in the proceeding on January 13, 2026.

2. The application was initially heard by videoconference on January 13, 2026. Only the Landlord's representative, Alishia Lavallie, attended the case conference, and the Tenant did not attend. The Board subsequently issued order LTB-T-044484-25 on January 20, 2026, dismissing the Tenant's application. On January 22, 2026, the Tenant requested a review of that order.
3. The Tenant's Representative request for review because he was not responsalyb able to participate in January 13's proceeding. The Tenant's Representative testified that on January 13, 2026, he logged into the proceeding and attended briefly in the morning. He testified that he had an Ontario Court of Justice (OCJ) matter scheduled for the same time. He stated that he advised the Board moderator of the conflict and asked that the matter be stood down until the OCJ matter concluded. He testified that he did not speak to the Member directly. He left the hearing room and returned shortly after noon, around 12:15 p.m. Upon returning, he was told the matter had been heard at approximately 11:56 a.m. He acknowledged that he did not request a rescheduling before the hearing date. He testified that he learned the day before the hearing that he would be handling the file. He did not contact the Landlord's Legal Representative in advance to seek consent to an adjournment. He also acknowledged that he did not arrange for another staff member from his office to monitor the hearing in his absence.
4. The Landlord's Legal Representative opposed the request. She submitted that Mr. Klingenberg arrived late, at approximately 9:45 a.m., and that she had already been advised by the moderator that the matter would be treated as uncontested. She stated that the moderator asked Mr. Klingenberg multiple times where he was and which court he was attending. She submitted that he said he was attending an OCJ matter but refused to provide further details, stating it was private. She submitted that the moderator advised Mr. Klingenberg that the matters were short and that he should remain available, or have someone available, but he did not return, and the hearing proceeded.
5. The Board record confirms that the matter was called by the Member at 11:56 a.m. and proceeded as uncontested when neither the Tenant nor the Tenant's Representative attended at that time.
6. *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.

7. On the evidence before me, the Tenant's Representative knew by the day before the hearing that he would be speaking to the matter. He did not request rescheduling before the hearing date. He did not contact the Landlord's Legal Representative to seek consent to an adjournment. He did not arrange for another representative to remain available to attend the hearing while he dealt with his other commitment. He attended briefly, raised the conflict with the moderator, and then left without addressing the Member directly. His expectation that the matter would be stood down was not confirmed by the Member. There

is no evidence of any Board error or confusing communication by the Board that prevented participation.

8. In these circumstances, I find that the Tenant had a reasonable opportunity to participate and did not exercise due diligence to do so. The request for review is therefore denied.

Cost:

9. At the hearing, the Landlord's Legal Representative requested costs against the Tenant's Representative. She submitted that the request for review was without merit and was an attempt to obtain a second opportunity to correct deficiencies. The Tenant's Representative opposed the request and submitted that the scheduling conflict was unforeseen and that he stepped in on short notice due to the Tenant's health issues.
10. The Board's Interpretation Guideline 3 assists members in assessing when costs may be warranted. Generally, the only costs allowed is the application fee. However, the Board does have the authority to order other costs like representation and Board costs where a party or their agents/representatives conduct themselves unreasonably. The Guideline points out that conduct is unreasonable if it causes undue expense or delay and provides a list of examples. In this case, I do not find the actions of the Tenant, or their representative rise to the level of unreasonable conduct warranting a costs award. In my view awarding costs in these circumstances would discourage landlords and/or tenants from exercising their statutory rights. Therefore, the Landlord's Legal Representative request for costs is denied.
11. This order contains all of the reasons for the decision. No further reasons will be issued.

It is ordered that:

1. The request to review order LTB-T-044484-25 issued on January 22, 2026, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on January 26, 2026, is cancelled.

March 03, 2026
Date Issued

Joy Xiao
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.