



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

Citation: Khan v Serdaru, 2026 ONLTB 31897

Date: 2026-04-17

File Number: LTB-L-000109-26-SA-RV

In the matter of: Main Floor, 16 GAGE AVE
SCARBOROUGH ON M1J1T2

Between: Rafiqul Khan Landlord

And

Rebeca Serdaru Tenants
Tinel Dumitru

Review Order

Rafiqul Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Rebeca Serdaru (RS) and Tinel Dumitru (TD) (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

This application was resolved by order LTB-L-000109-26 issued on January 9, 2026. The Tenants filed a motion to set aside the order. The Tenants' motion was resolved by order LTB-L-000109-26-SA issued on March 13, 2026.

On April 11, 2026, the Landlord requested a review of order LTB-L-000109-26-SA.

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 grants the Tenants' motion to set aside order LTB-L-000109-26 because the Member was not satisfied that the Tenants agreed to terminate the tenancy.
2. When the LTB conducts a motion to set aside an order that was granted on a landlord's L3 application and the tenant's position is that they did not agree to terminate the tenancy or they did not give notice to terminate the tenancy, the hearing of the motion turns into a fresh hearing of the landlord's L3 application. For this reason, in this case, the Landlord bore the onus to prove, on a balance of probabilities, that the Tenants agreed to terminate the tenancy.

3. Most of the Landlord's request for a review is essentially an attempt to offer evidence and submissions that were not given at the hearing. He submits that his primary language is not English and that he was poorly represented.
4. If the Landlord required interpretation in the hearing the Landlord should have requested an interpreter through the LTB (which would be granted if the Landlord qualifies financially) or arranged for an interpreter. There is no indication that the Landlord had done either of these things.
5. In *D.W. v. White*, 2004 CanLII 22543, the Ontario Court of Appeal indicated that the ground of ineffective assistance of counsel should be available in the rarest of cases such as cases involving some overriding public interest, cases engaging the interests of vulnerable persons like children or persons under a mental disability, or cases in which one party to the litigation is somehow complicit in the failure of counsel opposite to attain a reasonable standard of representation.
6. This case is not rare. This case is not of overriding public interest. It is a case about whether the Tenants agreed to terminate the tenancy. The Landlord states that he is 67 years old and English is not his primary language. This does not make the Landlord vulnerable for the purposes of an allegation of ineffective counsel. There is no allegation that the Tenant or the Tenant's representative was complicit in the failure of the Landlord's representative to effectively represent the Landlord. I am therefore not satisfied that ineffective assistance of counsel is a sufficient ground to support a review request in this matter.
7. The review request submits that the determination that the Tenants did not sign the N11 agreement was based on insufficient evidence. At the hearing of the motion the Tenant testified that he did not sign the N11 agreement to terminate the tenancy. The Landlord testified that he witnessed both Tenants signing the N11 agreement. The Tenant testified that neither of the Tenant signatures on the N11 are his. He entered several other signature samples into evidence for comparison. The order shows that the Member considered all of the relevant evidence that was presented and then concluded, on a balance of probabilities, that the Tenants did not sign the N11 agreement. This was essentially a finding that the Member was not satisfied that the Tenants had signed the N11 agreement. This is a reasonable finding on the evidence presented. In the full context of the evidence given, it was not necessary for the Tenants to present a professional handwriting analysis to demonstrate the problem with the signatures.
8. The review request also submits that the Member failed to consider contradictions in the Tenant's testimony about the purpose of a visit from the Landlord on December 31, 2025. The Tenant's testimony on this point was somewhat unclear but the hearing recording does not support that it was contradictory.
9. The review request submits that the Member failed to consider that the Tenant's evidence that December rent was paid was contradicted by the Landlord's evidence. On this issue neither party gave any documentary evidence and neither party was cross-examined on their statements about whether the Tenant paid rent for December. The

order notes at paragraph 5 that the Tenant testified that he paid rent for December and does not note that the Landlord testified that this rent was not paid. The order does not find as a fact that December rent was paid or not paid. The issue of whether this rent was paid was somewhat relevant to the issue of whether the parties agreed to terminate the tenancy but is not determinative. The issue as to whether the parties agreed to terminate the tenancy was determined based on the testimony of the parties, a lack of supporting evidence from the Landlord, and the Tenant's evidence suggesting that neither of the signatures on the N11 agreement are his. In these circumstances, even if it was an error not to consider the Landlord's testimony that the Tenants' rent deposit was used for the December rent, it was not a serious error as it had no material effect on the outcome of these proceedings.

10. The Landlord submits that the Member's determinations do not take into account documentary evidence that the Tenants were aware that they were expected to move out by December 31, 2025. This evidence was not presented at the hearing and so it was not an error for the Member not to consider it.
11. The Landlord also raises issues regarding the whereabouts of the Tenant RS during the hearing and the service of the *ex parte* order on the Tenants. Neither of these issues are material to the outcome of the proceedings.
12. 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 Landlord was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-000109-26 issued on March 13, 2026 is denied. The order is confirmed and remains unchanged.

April 17, 2026
Date Issued

Renée Lang
Vice Chair, 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.