



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

Citation: Burbank Heights Development Inc v Fathitili, 2026 ONLTB 32194

Date: 2026-04-20

File Number: LTB-L-000702-24-RV

In the matter of: 710 SHEPPARD AVE E
NORTH YORK ON M2K1B7

Between: Burbank Heights Development Inc Landlord

And

Hassan Fathitili Former
Tenant

Review Order

Burbank Heights Development Inc (the 'Landlord') applied for an order requiring Hassan Fathitili (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

The Landlord also applied for an order requiring the Former Tenant to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was resolved by order LTB-L-000702-24 issued on April 2, 2026 pursuant to a hearing held by videoconference on February 19, 2026 at which the Landlord's Agent, Sam Abtahi, the Landlord's Legal Representative, Sam Ursino, the Former Tenant and the Former Tenant's witness, Milad Sarabi ('MS'), attended.

On April 17, 2026, the Former Tenant 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 Former Tenant submits that they were not able to reasonably participate in the proceedings and there was a serious error in the proceedings or the order based on a number of reasons identified in their request. These submissions can be summarized as:
 - a. The Former Tenant was not permitted to raise issues pursuant to sections 82 and 87(2) of the *Residential Tenancies Act*, 2006 (the "Act");

- b. The Former Tenant was not permitted to call evidence or raise issues they wished to raise, including being denied calling witnesses they wished to call;
- c. The factual finding made by the Member that the Former Tenant did not provide verbal notice to the Landlord of their intent to vacate the rental unit in June, 2023 was incorrect and this constitutes a serious error in the order; and
- d. The result of the proceeding is incorrect as there is evidence that the Landlord had received a notice of termination from the Former Tenant, and issues relating to notices of termination served by the Landlord were not raised or addressed in the hearing and therefore the order contains a serious error.

Section 82 Issues

- 2. The Tenant states it was a serious error and they were not able to reasonably participate in the proceedings because the Member did not permit the Former Tenant to raise issues pursuant to sections 82 and 87(2) of the Act. The hearing order specifies that this decision was made as the Tenant failed to comply with interim order LTB-L-000702-24-IN issued on January 6, 2025. That order required the Former Tenant to provide a written list of issues they intend to raise pursuant to section 82 on or before January 31, 2025.
- 3. The Former Tenant filed some evidence they wished to raise in respect of section 82, but never provided a written description of each issue the Former Tenant intended to raise. It is a requirement pursuant to LTB Rule 19.4 to provide such a written description of issues in order to raise issues under section 82 of the Act. Given this requirement was never met, and that there was a previous interim order directing the Tenant to comply with this Rule by January 31, 2025, it was reasonable and not arbitrary or capricious for the Member to refuse to hear these issues.
- 4. It was therefore not an error for the Member to refuse to hear issues the Tenant intended to raise pursuant to sections 87(2) and 82 of the Act.

Limitation of Evidence

- 5. The Tenant submits they were not permitted to call evidence or raise issues that were central to their case, including that they were not permitted to call witnesses they wished to call and that this was a serious error in the proceedings and meant they were not able to reasonably participate in the hearing.
- 6. I reviewed the hearing recording. The only evidence the Former Tenant was denied raising was evidence regarding the issues he intended to raise pursuant to sections 87(2) and 82 of the Act, which were not permitted for the reasons above. At 1:10:33 the Member specifically indicates they will hear evidence from the Former Tenant related to any issues they wish to raise if they are relevant to establishing the reasons and timing of the Former Tenant giving a notice to vacate or vacating, but will not hear evidence from the Former Tenant for the purposes of establishing whether a rent abatement would be appropriate. I find given the ruling in relation to section 82 issues noted above, that this is

both appropriate and reasonable. The Former Tenant was afforded natural justice and a reasonable opportunity to present their evidence.

7. At 1:24:20 of the recording the Member and the Former Tenant discuss what the proposed witnesses the Former Tenant intends to call would be able to speak to. The Former Tenant made clear that each witness would intend to give a statement as to being present for a conversation in which the Former Tenant gave verbal notice to the Landlord to terminate the tenancy over the phone on June 6, 2023. The Member makes clear that they will only hear from one further witness on this point and directs the Former Tenant to pick one witness to testify in this regard. This direction is given prior to the Former Tenant calling their witness to testify.
8. In *Edwards v. Waham* 2017 ONSC 2882, the Court held:

“[O]ne of the clear statutory purposes of the Landlord and Tenant Board is to afford landlords and tenants access to adjudication in a timely, cost effective setting where matters are heard in a summary manner”.
9. It is not a serious error for the Member to limit evidence and to only permit evidence that is relevant and not repetitious. The Member must conduct the hearing expeditiously while giving the parties an adequate opportunity to be heard. This is set out in section 183 of the Act.
10. It was appropriate and reasonable in accordance with the Member’s obligation pursuant to section 183 of the Act to refuse to hear from further witnesses as to conversations regarding the Former Tenant giving verbal notice of termination to the Landlord on June 6, 2023 where the Former Tenant and another witness had already testified to in regard. I find that this does constitute an adequate opportunity for the Former Tenant to be heard in relation to this issue and for a full and fair disclosure of all relevant matters. It therefore was not an error for the Member to refuse to hear from two further witnesses in relation to conversations between the Former Tenant and the Landlord on June 6, 2023.
11. While the request to review submits that the witness called had difficulty communicating clearly in English and therefore was unable to serve as an effective witness, this is not a breach of procedural fairness. The Former Tenant was informed prior to calling any witness that he would only be permitted to call one, and the Former Tenant made the choice to call the witness who testified. The witness appeared to be able to understand and respond to the questions asked. That the Former Tenant was not satisfied with the effectiveness of the witness’ testimony does not obligate the Member to permit further witnesses, and it was not a breach of procedural fairness for the Member not to do so.

Factual Findings

12. The request to review submits that the Member made an incorrect factual finding that the Former Tenant did not provide the Landlord verbal notice to terminate the tenancy in June, 2023.

13. Paragraph 17 of the order sets out a reasonable basis for this determination. As stated in Guideline 8 of the Board's Interpretation Guidelines, the Member's findings of fact are entitled to considerable deference. Reasonable determinations will not be interfered with on review.
14. There is nothing in the record to support a determination that the Member applied improper principles in assessing the evidence introduced or that there was insufficient evidence before the Board to support its conclusions. Therefore, It was not error for the Member to make this factual finding.

Evidence of Notices of Termination

15. The Former Tenant submits that the result of the proceeding is incorrect as there is evidence that the Landlord had received a notice of termination from the Former Tenant, and issues relating to notices of termination served by the Landlord were not raised or addressed in the hearing. The Former Tenant submits that therefore the order contains a serious error.
16. A review of the hearing recording shows that the Former Tenant did not raise any evidence in the hearing in regard to the Landlord acknowledging a notice of termination given by the Former Tenant. The Former Tenant refers to an e-mail contained in the Landlord's evidence package, but this e-mail was not raised by either party in the hearing. Instead, a review of the recording at 1:17:00 indicates the Member inquires as to whether the Former Tenant ever received anything in writing from the Landlord acknowledging the notice they wished to bring to the Member's attention, and the Former Tenant indicates there is not such document.
17. The only mention in the hearing recording of notices of termination served by the Landlord is when the Landlord's Legal Representative indicates that no notices of termination were served at 44:45 of the recording. The Former Tenant does not challenge this assertion, and did not raise anything related to notices of termination served by the Landlord during the hearing.
18. Absent a serious error, a review is not an opportunity to reargue your case in hopes of a more favourable outcome. Nor is it an opportunity to present evidence and submissions that could and should have been presented at the original hearing. It is not an error for the Member to not consider issues not brought to their attention during the hearing. I therefore find it was not an error for the Member not to consider the above noted evidence related to notices of termination that was not brought to their attention during the hearing.
19. 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 Tenant was not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-L-000702-24 issued on April 2, 2026 is denied. The order is confirmed and remains unchanged.

April 20, 2026
Date Issued

Benjamin Seigel
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.