



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

Citation: Zita v Zawislak, 2026 ONLTB 32348

Date: 2026-04-23

File Number: LTB-L-071581-25-RV

In the matter of: 61A WOODBURY RD
ETOBICOKE ON M8W1X8

Between: Pasquale Zita Landlords
Lucia Ricchezza

And

Helena Zawislak Tenant

Review Order

Pasquale Zita and Lucia Ricchezza (the 'Landlords') applied for an order to terminate the tenancy and evict Helena Zawislak (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant.

This application was resolved by order LTB-L-071581-25 issued on March 16, 2026.

On April 15, 2026, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

A preliminary review of the request was completed without a hearing.

Determinations:

1. 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. I say this for the following reasons.
2. By way of background, a hearing for the Landlord's L2/N5 application was held on November 26, 2025. The Landlord, the Tenant, her occupant and the Tenant's legal representative were in attendance.
3. As per the March 16, 2026 order, the Member granted the Landlord's application, in part. The Member used her discretion to preserve the tenancy by way of a conditional order. Specifically, the Tenant was granted additional time to restore the garden to its original

state. This provision was protected by a section 78 clause in the event the Tenant breached the order.

4. The Tenant's request for review is summarized as follows:

- The order contains a serious error as the Member ought to have found the notice of termination void;
- The Member misapprehended the test under s.64 of the Residential Tenancies Act, 2006, (the 'Act');
- The Member failed to adequately apply the Human Rights Code ("the Code") and improper use of discretion;
- The Member made a factual error related to the photo and description of the garden.

Was there a serious error related to the validity of the termination notice?

5. I have reviewed the Board's application record and listened to the entirety of the November 26, 2025 hearing recording.
6. In the review request, the Tenant asserts that the Member should have outright dismissed the Landlord's application for a defective N5 notice. Specifically, the Tenant submits that the N5 notice provided insufficient reasons and details related to the claims made.
7. At around 2:10:27 of the recording, the Member asks the Tenant's representative for submissions related to this issue. The representative did not make a motion to dismiss the Landlord's application as defective.
8. While the review request cites case law, and various reasons as to why the member should have found the notice defective, there is nothing in the record to suggest that the Tenant's representative raised the issue at the hearing. If the Tenant wished to raise this issue, the proper time to do so was at the hearing and not on the review request.
9. Guideline 8 says, in part, that if evidence was not presented at the hearing, the reviewing Member has the discretion to accept or refuse the new evidence. The threshold issue for the reviewing Member is whether there a sufficient reason why the evidence was not presented in the original hearing. Surely if the Tenant believed the termination notice to be invalid, they could have raised it at the hearing. As a result, it would be improper for me to send the request to review to a hearing for this purpose as the review process is not intended to provide parties with an opportunity of presenting a better or different case than they did at first instance.

Did the Member misapply the legal test?

10. The review request claims that the Member misapprehended the legal test of s.64 of the Act. Specifically, the Tenant states that the Member conflated the "substantial interference" test with the test for damage under s. 62 of the Act. By doing so, it is unclear from the decision as to whether the Member's finding is based on substantial interference or damage.

11. I acknowledge that the order does make reference to the state of the garden as damage. However, in paragraph 20 of the order, the Member also makes a determination that the state of the garden constitutes substantial interference.
12. In my view, while the Member may have inadvertently referenced damage in respect to the garden, it is clear the Member's finding includes an analysis and finding of substantial interference. While the Member may have erred with respect to the damage analysis, it is not a serious error that would have changed the outcome of the Order as the Member's decision relates to s.64 and substantial interference.

Does the order contain an error of fact related to the photo evidence of the garden?

13. The review request claims that the Member made a serious error of fact with respect to the photograph submitted by the Landlord as evidence.
14. Specifically, the Tenant challenges the date of the photograph and the conclusions drawn by the Member that the garden has been in a similar state for several years.
15. Even if the Member misunderstood the date of the photograph, the oral evidence provided by the Landlord at the hearing, as confirmed by the hearing recording was sufficient enough for the Member to conclude that the state of the garden had deteriorate to such a degree that it substantially interfered with the Landlord's lawful right, privilege.
16. In my view, the Member's conclusion therefore falls within a reasonable range of outcomes.

Did the Member fail to accurately apply the Human Rights Code?

17. The Tenant takes the position that the Member, having found the Tenant's physical condition fits the definition of a disability pursuant to s.10(1)(a) of the Code, failed to consider the Landlord's duty to accommodate and provide relief from eviction.
18. To summarize, the Tenant asserts that while the Tenant did not disclose to the Landlord their circumstances or request accommodation with respect to the garden, the Member should consider that the Landlord ought to have known about the Tenant's circumstances and therefore should not have served the N5 notice without addressing the Tenant's accommodation needs. The Tenant believes that the Landlord has a duty to inquire about accommodation needs, even when the Tenant has not explicitly requested accommodation. As part of the s.83 analysis, the Member was obligated to address the Landlord's obligations to accommodate and should have dismissed the Landlord's application.
19. In the request to review the order, the Tenant believes that the Landlord has a duty to accommodate, based on the Tenant's medical needs, and relief from eviction must be granted.
20. It is well established that, if a tenant contravenes the Act, and the contravention is caused by a disability, then before terminating their tenancy the Board must first consider whether the landlord can resolve the contravention by accommodating the tenant's disability-related needs. It is also well-established that in some cases, a landlord's duty to accommodate

can include a duty to proactively inquire into a tenant's disability-related needs. In those cases, the tenancy cannot be terminated if the landlord's duty to inquire has not yet been discharged.

21. It is made clear in both the order and hearing recording that the Landlord was not made aware of the Tenant's physical circumstances nor any accommodation request. There was no evidence before the Member that the Landlord failed in their duty to accommodate.
22. While the Member found that the Tenant has a physical disability pursuant to s.10(1)(a) of the Code, the Member had no reason to believe the ground for eviction is related to the Tenant's physical disability.
23. The LTB's usual approach to the accommodation analysis was first articulated by the Divisional Court in *Walmer Developments v. Wolch*, 2003 CanLII 42163 (ON SCDC), the case which established that the Human Rights Code applies to LTB proceedings:

For these reasons, we are of the view that the [Ontario Rental Housing Tribunal] is bound by the legislation to comply with [the Human Rights Code] in full in its decision-making and in particular when exercising its discretion under s. 84 as to whether it would be unfair to the landlord not to evict a person suffering from a disability. The ORHT must consider whether any disruption in the enjoyment of other tenants may be sufficiently alleviated by a reasonable accommodation of the disabled tenant without undue hardship to the landlord.

24. *Walmer* was decided under the Tenant Protection Act, 1997, SO 1997, c 24 (TPA). Section 84 of the TPA is now section 83 of the RTA, which provides that the LTB must refuse eviction if doing so would not be unfair to a landlord. Eviction can be refused conditionally.
25. Consistent with *Walmer*, when a landlord applies to evict a tenant because of a contravention of the Act related to a disability, the LTB's usual approach is to consider whether the disability can be accommodated without undue hardship, such that the contravention can be resolved. If it can, then eviction is refused pursuant to section 83, usually with conditions giving effect to the accommodation plan.
26. In cases where a landlord's duty to accommodate includes a duty to inquire, then if the landlord has not yet discharged that duty, eviction is refused pursuant to section 83. In most cases, an accommodation plan is ordered. This makes sense because, even if a landlord failed to inquire into a tenant's disability-related needs prior to a hearing, the hearing itself is a forum for the tenant to explain their disability-related needs so that the LTB can determine what accommodations are appropriate.
27. Both the hearing recording and the order confirm that the Member turned her mind to the Tenant's disability and accommodation needs. The Tenant did not produce any documentary evidence of a disability, did not disclose any request for accommodation to the Landlord and did not address any specific needs at the hearing. The hearing provided a full opportunity for the Tenant to explain her disability-related needs. As per paragraph 21 of the March 16, 2026 order, the Tenant did not state "any accommodation that they particularly require...". However, the Member granted relief by way of a conditional order as part of her s.83 analysis.

28. In the circumstance, in my view, the Tenant had every opportunity to explain her needs during the hearing, if she had, then the Member could have identified an accommodation plan to be included in the conditional order. Nevertheless, the Member, having considered the Tenant's circumstances granted conditional relief. In her decision, the Member exercised her discretion to delay eviction by roughly three months. This was a reasonable outcome in this circumstance.
29. Given all of the above, the Tenant's review request is dismissed.
30. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The request to review order LTB-L-071581-25 issued on March 16, 2026 is denied. The order is confirmed and remains unchanged.

April 23, 2026
Date Issued

Dana Wren
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.