



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

Citation: 2478405 Ontario Inc v Elshaw, 2026 ONLTB 34095

Date: 2026-04-27

File Number: LTB-L-010315-26-RV

In the matter of: 122 CHURCHLAND DR
BARRIE ON L4N8N8

Between: 2478405 Ontario Inc Landlord
Alexander Pomeransky

And

Devon Elshaw Tenant
Rebecca Tabor

Review Order

2478405 Ontario Inc and Alexander Pomeransky (the 'Landlord') applied for an order to terminate the tenancy and evict Devon Elshaw and Rebecca Tabor (the 'Tenant') because the Landlords require vacant possession of the rental unit in order to do major repairs or renovations to the unit.

This application was resolved by order LTB-L-010315-26, issued on April 15, 2026.

On April 24, 2026, the Landlords requested a review of the order.

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

Reasons:

1. The Landlords applied to terminate the tenancy on the basis that they in good faith intended to carry out repairs or renovations so extensive as to require vacant possession and a building permit.
2. The Member dismissed the application. She found that the Landlords had not proved that they in good faith intended to carry out the work. In the alternative, she found that she was required to refuse eviction pursuant to section 83(3)(c) of the *Residential Tenancies Act, 2006* (RTA) because the reason for the application being brought was that the Tenants had attempted to secure or enforce their legal rights. She dismissed the application.
3. The Landlord requests a review, arguing that the Member erred in both findings.

4. Pursuant to Guideline 8, my role at this stage is to determine whether the decision *may* contain a serious error. If it may, then I send the review to a hearing to consider whether the decision actually contains an error. If I am not satisfied that the decision may contain a serious error, then I deny the review.
5. For the following reasons, on the basis of the submissions made in the request, I am satisfied that the Member *may* have erred in finding that the Landlords did not in good faith intend to carry out the work they said they would carry out. However, I am not satisfied that the Member may have erred in finding, in the alternative, that eviction was barred by section 83(3)(c).
6. Even if the Member's finding on the Landlords' good faith were to be overturned on review, her finding on section 83(3)(c) would be upheld, so eviction would be barred and the application would be dismissed. I therefore conclude that if the Member erred in respect of good faith, the error was not serious because it would not have affected the outcome of the proceeding.

The Landlord's good faith intention

7. The Member found that the reason the Landlord decided to renovate the unit was that the Tenants had refused to agree to an illegal rent increase. She found that this meant that "the Landlords' intentions were not formed from a genuine intent to extensively renovate or repair the rental unit" and that this meant that they did not have a good-faith intent.
8. The Member may have erred by applying the wrong test for good faith. Pursuant to *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), "good faith" in this type of application means that a landlord genuinely intends to do what they claim to intend to do. In this case, the Member's Reasons suggest that she may not have considered whether the Landlords genuinely intended to renovate the unit. She may instead have considered that the reason they formed that intention was, in her view, improper. This may have been an error.
9. If the Member's finding regarding good faith were the sole basis for her decision, then I would send the review to a hearing to determine whether she erred.

Section 83(3)(c)

10. However, the Member also found that, even if the Landlord in good faith intended to renovate the property, eviction would be barred by section 83(3)(c). She found that the Landlords had first proposed that the Tenants accept an illegal rent increase, telling them that if they did not accept, he would have to renovate the unit. The Tenants refused the increase, and the Landlords proceeded to apply to evict them in order to renovate the unit. On a balance of probabilities, the Member found that the reason the application was brought was because the Tenants enforced their rights.

11. The Landlords argue that the Member made two errors. First, they argue that her findings of fact were unsupported by the evidence. They point out that on March 25, 2025, the Tenants sent the Landlord an email offering to agree to an illegal rent increase. They argue that the Tenants proposed the increase, and that the Member should therefore not have found that the Landlord had tried to impose the increase.
12. I am not persuaded by the Landlord's argument. The Member considered the March 25 email, but she also considered a recording of a phone call between the parties on March 18, 2025. She found that in the phone call, the Landlord told the Tenants that he believed they could agree to an illegal rent increase, and that if they did not, he would have to either renovate or sell the house. The Tenants' March 25 offer was made in response to the Landlord's March 18 proposal.
13. Clearly, on the evidence before her it was open to the Member to find that the Landlord first attempted to impose an illegal rent increase, and only decided to renovate the property after the Tenants refused. There is no error in the Member's finding of fact.
14. Second, the Landlords argue that, pursuant to *Okoye v. De Melo*, 2021 ONSC 6201 (CanLII), section 83(3)(c) only applies if retaliation is the "sole or primary" reason for eviction. They argue that in this case, retaliation was only one of the reasons for eviction; the other reason was that the Landlords intended to renovate the unit.
15. I am not persuaded by that argument, either. Retaliation may not have been the sole reason for the eviction application, but it was open to the Member to find that it was the primary reason. The Member found that the Landlords only decided to renovate the unit because the Tenants had refused an illegal rent increase. She concluded that retaliation was the therefore the primary reason for the eviction. Her conclusion was within the range of reasonable outcomes available to her.

Result

16. I am not persuaded that the Member erred in finding that eviction was barred by section 83(3)(c). It therefore does not matter that she may have erred in finding that the Landlords did not in good faith intend to renovate the unit. Regardless of the Landlords' intentions, the Member was required to refuse eviction. She did not err by doing so. The review will be denied.

It is ordered that:

1. The request to review order LTB-L-010315-26, issued on April 15, 2026, is denied. The order is confirmed and remains unchanged.

April 27, 2026
Date Issued

Dale Whitmore
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.