



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

Citation: Zachar v Rad, 2026 ONLTB 29510

Date: 2026-04-30

File Number: LTB-T-092707-25-RV

In the matter of: 339 TAMPA DR
KESWICK ON L4P3A3

Between: Deb Zachar Tenant

And

Amir (Aiden) Rad Landlord

Review Order

Deb Zachar (the 'Tenant') applied for an order determining that Amir (Aiden) Rad (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was resolved by order LTB-T-092707-25 issued on February 11, 2026.

On February 21, 2026, the Landlord requested a review of the order.

On February 25, 2026, LTB-T-092707-25-RV-IN was issued, staying the order issued on February 11, 2026.

This request to review was heard by videoconference on April 8, 2026.

The Landlord, the Landlord's Legal Representatives Anome Mehrabian and Eric Spalvieri, the Tenant and the Tenant's Legal Representative Kimberley Teel attended the hearing.

Determinations:

1. For the reasons below, the Landlord's request to review was denied at the review hearing.

Correction to the Landlord's name

2. At the original hearing, the Landlord informed the Member that his name was incorrectly identified on the application and asked it to be amended to reflect his legal name "Amir" Rad (he is often referred to as "Aiden"). Although the change was accepted by the Member, the amendment was inadvertently overlooked. This application is amended to correspond with the Landlord's request.

The undisputed facts

3. On November 9, 2024, a fire occurred in the rental unit. The Tenant had taken a nap and left a candle unattended in an adjacent room. The burning candle was the source of the

fire. Fire Services attended to douse the fire and notified the Landlord that the cause appeared to be accidental due to the lit candle.

4. The conditions rendered the unit uninhabitable, and the Tenant was displaced. She resides elsewhere temporarily, waiting for the fire remediation of the unit to be finished.
5. The Tenant filed a T6 application on November 4, 2025, alleging that the Landlord failed to effectively repair the fire damage to the unit in a timely manner. As of the date of the original hearing, 12 months had passed, and the Landlord had not performed any repairs, or he had only made nominal repairs.
6. The Tenant continued to pay the monthly rent to the Landlord from December 2024 onwards at the advice of her property insurer; this was a condition allowing the insurer to cover her additional living expenses ("ALE") under her insurance policy.
7. The insurer paid for the Tenant's temporary lodging and other ALE up to the insurable limit. The Tenant incurred \$11,671.64 in additional housing and out-of-pocket expenses after coverage was capped because the unit was still not ready for occupancy.
8. A hearing was held on November 19, 2025. At that hearing, the Landlord sought to dismiss the application.
9. On February 11, 2026, the presiding Member issued an order granting the application and awarding a rent abatement and reimbursement of out-of-pocket expenses. The Landlord was also required to provide an updated timeline to the Tenant respecting the anticipated date when the repairs would be done, rendering the unit habitable.
10. The Landlord requested a review of the order alleging that there were serious errors in both the proceedings and in the order.

The Request to Review

11. The Landlord raised the following grounds representing alleged serious errors, which he contends materially affected the outcome:
 - The hearing Member's analysis mischaracterized the fire as being an act of nature, with no fault attached despite fault being a critical factor.
 - Since the Tenant was at fault by their negligent conduct, the Member ought to have applied section 34 of the *Residential Tenancies Act, 2006* (the 'Act').
 - The Member incorrectly applied the legal test for frustration of contract.
 - The Member failed to consider the principles of "double recovery" and "unjust enrichment" in his analysis respecting the remedy.
12. The Landlord asks the Board to either set aside the order or, alternatively, to "reassess liability and quantum" of the remedy ordered. The variation of remedies the Landlord seeks is broadly worded, without proposing what he considers to be appropriate relief.

The scope of the Review

13. Ordinarily, a party cannot raise on review an issue they did not ask the Board to decide. It was not apparent from the final order that the Landlord actually asked the Member (i) to decide whether section 34 of the Act applied or (ii) to assess liability for, and quantum of, the financial remedy the Tenant was seeking.

14. The Board has the discretion at the review hearing to consider or clarify possible serious errors in the proceedings and/or in the final order. I was satisfied that, in this instance, it would not be unfair to address the issues described. The Tenant had adequate notice of the Landlord's claims and made submissions at the review hearing.

Frustration of contract

15. The Landlord's position at the original hearing was that the doctrine of frustration of contracts was relevant to the Board's determinations and that the hearing Member misapplied the law regarding section 19 of the Act. That provision states that the doctrine of frustration of contract applies with respect to tenancy agreements.
16. The presiding Member articulated the established legal test at para. 17 of the order, as follows (referring to *Barnaby v. Salamander Opportunities et al*, [2018, ONSC 5749](#)):

"An unexpected event that was not foreseeable or contemplated in the contract; and, that is not the fault of either party; and that drastically changes the nature of the contract so that it is impossible, not just difficult or expensive, to perform the obligations. The impossibility must be of a long-term nature and not temporary or transient."¹

- The foreseeability of the event

17. The Landlord's Legal Representative E.S. submits that the Member made a "rather large stretch" when he concluded that having property insurance coverage demonstrates that a fire in a rental unit is reasonably foreseeable.
18. He contends that a landlord does not purchase insurance because they think that a tenant is going to light a candle and fall asleep, resulting in a fire starting and ensuing property damage; landlords obtain insurance because it provides a safety net, not because they "are going to have to act on it".
19. There is a shortcoming in the Landlord's position. It misstates what "foreseeability" means, distorting "foreseeing a type of risk" with "foreseeing a specific chain of future events". Instead, the question to be asked is: was the general risk of fire known to the parties when renting out, and when agreeing to occupy, the rental unit?
20. Fires may occur for different reasons: when a tenant or occupant is cooking, smoking, using candles unattended, overloading electrical outlets or using a defective power cord. A fire may occur because of a fault in the building's electrical system.
21. The risk of fire cannot be an extraordinary, interrupting event if the possibility was within the reasonable contemplation of the parties at the time they entered into the tenancy agreement. In fact, insurance exists precisely because the concept of frustration of contract does not apply to foreseeable risks like fire.
22. Buying fire insurance demonstrates that fires are a known risk and that the insured party planned for such possibility, including forecasting possible financial consequences.

¹ The Member also referred to: TET-67067-16 (Re), 2016 CanLII 72234 (ON LTB), par. 12; SWT- 15411-18-AM (Re), 2018 CanLII 88487 (ON LTB).

Landlords routinely demand that tenants obtain property insurance as a condition of the tenancy agreement.

- The tenancy terminated at the time of the fire

23. E.S. also submits that the Member could have found that the tenancy terminated immediately after the fire because the tenancy agreement could not continue in any form.
24. He reasons that a habitable unit is a fundamental term of the tenancy. At the time of fire, either the rental unit was usable and the residential lease was not frustrated, or the unit was 100% unusable and the lease was frustrated. The issue, he submits, is not whether the unit is capable of being repaired, it is whether the Landlord could provide a habitable unit immediately after the fire occurred.
25. This is an erroneous premise. The Act clearly recognizes that the temporary inability to occupy a unit/loss of possession does not terminate a tenancy.
26. Residential tenancies are resilient to interruptions. If temporary non-availability of the unit not caused by the parties automatically frustrated tenancies then unexpected, major utility shutdowns during an ice storm or a flood triggered by a rainstorm causing a unit to be uninhabitable would instantly end tenancies. That is not what the Act says.
27. Section 19 of the Act permits tenancy termination only where extraordinary damage renders the existing unit permanently uninhabitable and neither party caused the damage. It does not say the tenancy ends whenever the tenant cannot occupy their temporarily uninhabitable unit; or that a tenancy ends whenever the tenant cannot live there.
28. Neither can landlords simultaneously argue that the tenant caused a fire in the unit *and* the tenancy was frustrated. These are mutually exclusive.
29. Therefore, the temporary “impossibility” of rendering partial or total service to the Tenant does not frustrate a contract. If the unit is damaged but repairable, the tenancy continues, and the tenant may return to occupy the unit after repairs are completed. The LTB has repeatedly rejected frustration arguments where the unit still exists and repairs are either possible, planned or underway.
30. Accepting the Landlord’s logic would allow landlords to improperly bypass due process for terminating tenancies and avoid LTB oversight. Landlords could treat these kinds of situations as engaging an automatic termination mechanism, thereby performing an end-run around a tenant’s statutory protections. This is inconsistent with the purpose of the Act and with established jurisprudence governing frustration of contract.
31. I am not persuaded by the Landlord’s submissions. I am satisfied that the Member carefully considered and appropriately applied the law to his finding of facts as set out at paras. 18 to 20 of the order. The Member clearly explains his refusal to accept that the tenancy was frustrated, relying upon binding caselaw confirming the applicable legal test.
32. The Member noted in the order that the Landlord presented no legal authorities for the Board’s consideration.

33. I find that the Member's analysis in this case is consistent with the Board's general approach to applying the frustration of contract doctrine.²

34. As there is no serious error, this ground of review is denied.

Did the hearing Member seriously err by neglecting to apply section 34 of the Act?

35. The Landlord's Legal Representative A.M. submits that the Landlord cannot be held responsible under section 20(1) of the Act for failing to maintain the unit in a good state of repair when there was no evidence that the Landlord defaulted on his section 20(1) obligations. This was raised as a defense at the original hearing.

36. A.M. submits that since the Landlord committed no wrong under the Act, the hearing Member ought to have dismissed the T6 application; in the alternative, the Member ought to have either refused to abate the rent, or properly apportioned liability between the parties to reflect a finding that the Tenant was at fault. The Member's failure to do any of these things constitutes a serious error.

37. The Landlord acknowledges that he must complete the fire remediation but contends that this only became a requirement after the Tenant caused the disrepair.

38. Essentially, the Landlord's position is that the Tenant was not entitled to bring a T6 because the fire damage was caused by the Tenant's own negligent behaviour and, but for that conduct, the Landlord would have no obligation to undertake those repairs.

39. The Landlord's Legal Representatives submit that as a result the hearing Member seriously erred by not summarily dismissing the application.

40. I disagree. This argument misstates how rights and obligations are allocated under the Act.

41. Section 20(1) of the Act imposes a positive, ongoing obligation on landlords to maintain rental units in a good state of repair and fit for habitation. It is not contingent on whether the Landlord was at fault for the disrepair or for allowing the disrepair to occur.

42. Section 34 of the Act establishes when a tenant may be financially responsible for damage caused by their wilful or negligent conduct. It preserves the landlord's right to recover reasonable repair costs through the LTB process.

43. The LTB's Interpretation Guideline 5- Breach of Maintenance Obligations refers to the possibility that a tenant's wilful or negligent conduct may warrant dismissing a claim.

44. This typically happens when (i) the landlord files an application claiming the cost of repairs for undue damage deliberately or carelessly caused by the tenant, (ii) the tenant files a T6 asking the Board to order the Landlord to complete the repairs and for a rent abatement or other compensation and (iii) the Board hears the applications together.

45. The Board will determine the issue, and in finding the tenant's conduct unlawful, may grant the landlord's application, dismiss the T6 or decline to grant the tenant a remedy.

² See also *Gorog v. Morse*, 2025 ONLTB 86472 (CanLII), *Spasov v. Alnapa Inc.*, 2024 ONLTB 80945 (CanLII); and *Haberman v. Grinsaft*, 2020 CanLII 118023 (ON LTB).

46. If the Board accepts the Landlord's submission that every T6 involving disrepair arising from a tenant's conduct must be dismissed on a preliminary basis, this will significantly restrict the application of section 20(1) in a way the Legislature did not intend.
47. The obligation imposed by section 20(1) is expressly framed without regard to fault. If tenant causation were treated as a jurisdictional bar to a T6, the result would be that landlords could leave units in disrepair indefinitely while pursuing negligence claims.
48. Such an interpretation would collapse section 20(1) into section 34, weakening its efficacy and rendering the remedial schemes in sections 62–66 and 89 largely redundant. It would tend to undermine the Act's intent, which is that disrepair is non-negotiable and that the unit must first be brought into a state of good repair before addressing fault through alternative mechanisms provided for in the Act.
49. Neither the Act nor the Guideline mandates that the Board undertake a causation inquiry at every T6 hearing. To accept the Landlord's position would be to require Members to make determinations of responsibility in every T6, even if such findings are unnecessary to the outcome. To be clear, the Act imposes no such requirement.
50. Additionally, there is no statutory language in the Act stating that a tenant who caused undue damage loses the right to enforce subsection 20(1), barring them from filing a T6. If the Legislature intended to compel tenants to remediate such damage themselves in lieu of filing a T6, section 34 would say so.
51. Here, the rent abatement analysis does not need to involve apportioning liability. The Board's remedial power does not authorize the Board to offset or account for tenant-caused damage by limiting the abatement where the unit is uninhabitable. That is because an abatement is a corrective remedy reflecting that rent was charged and paid during a period when no habitable unit was given.³
52. In effect, the Landlord is seeking restitution for which he has not applied with proper notice.⁴
53. I note that the Member made no findings of fault in relation to the cause of the fire, and he did not purport to allocate responsibility for the fire damage under section 34. Instead, the Member's reasoning demonstrates that he properly confined the analysis to matters necessary to determine the T6.
54. For the above reasons, I am unable to find merit to this ground of review.

The "double recovery" argument and the impact on the remedies ordered

55. The Landlord submits that the order contains a serious error because the Member granted a rent abatement to the Tenant despite the Tenant having been reimbursed already by their property insurer in a lump sum for the rent she paid to the Landlord.

³ See *Ha v. Williams*, 2021 CanLII 72328 (ON LTB), *Bengassem v. Abboud*, 2025 ONLTB 88201 (CanLII); *Husain v. Parekh*, 2026 ONLTB 15579 (CanLII).

⁴ Of note: the Landlord received a revised Fire Report from Fire Services dated March 18, 2026, correcting the cause of the fire as "Unattended/Unintentional". I find that the amended report does not add anything of value to the review – its relevance may be pertinent to a Landlord's application under sections 62(1), 66(1) or 89 of the Act.

56. The Landlord seems to imply this is a situation in which the cost of rent plus the cost of a hotel/Airbnb equals one housing cost, and that the insurer covers both. Then, by virtue of a 100% rent abatement, the Tenant improperly benefits from “double recovery” and is “unjustly enriched”.
57. The Tenant directly refuted the claim that her insurer paid her any sum for renting the unit.
58. While the double recovery argument sounds intuitive, it is misplaced because it is logically and legally incorrect. It is not enough for a landlord to simply say that insurance covered the tenant’s displacement costs, and refunding rent is unfair.
59. Insurance payments arise from a separate contractual relationship between a tenant and their insurer, where the insurer pays to help the tenant live elsewhere during temporary displacement. Most tenant policies cover reasonable temporary housing and extra costs incurred for being unable to live in the unit, including relevant meal, storage, and like expenses. The landlord is not a party to that contract.
60. So, rent and ALE are different expenses; they do not overlap in function or legal character.
61. The insurer paid for the Airbnb and associated expenses for one purpose only – to support the Tenant’s displacement. The funds did not replace, reimburse, or relate in any way to the rent the Tenant paid to the Landlord, which she continued to pay as advised by her insurer to maintain possession of the unit and her right to return once it became habitable.
62. In general, the fact that a tenant may have received assistance from a third party to pay rent does not affect the analysis. That is because abatements are assessed on the condition and availability of the rental unit and the landlord’s compliance with the Act, not on the source of funds used by the tenant to pay rent or to manage displacement.
63. If it was the case where the insurer temporarily reimburses or advances the rent so the tenant is not out of pocket while the situation stabilizes, it must be written in the insurance policy. As I understand the Tenant’s evidence, it was not. The Landlord led no evidence that the insurance payments made to the Tenant were for rent payable to the Landlord.
64. The Landlord’s argument also misconceives the nature of the rent abatement. The LTB routinely treats rent obligations as effectively suspended during the period the tenant cannot occupy the unit. Consequently, where the unit is uninhabitable, the landlord is expected to refund rent paid or not charge rent.
65. To be precise, a 100% rent abatement reduces rent owing for an uninhabitable unit during the impacted period to zero. It eliminates an improper payment. It does not create a financial gain for the tenant.
66. I take into account the possibility that the Landlord may ultimately be indemnified by his insurer for loss of rental income.
67. I find that the hearing Member was entitled to treat insurance payments as legally irrelevant to the question of a rent abatement in the circumstances.
68. Awarding specific remedies involves an exercise of the original hearing Member’s discretion and such exercise is entitled to considerable deference. The LTB will not ordinarily grant a review where the original result is within the range of reasonable, acceptable outcomes.

69. I find that the hearing Member expressly turned his mind to the issues before the Board. He made reasonable determinations which do not warrant interference on review. The Landlord has not demonstrated that the remedy was unreasonable or otherwise outside of the normal range of outcomes. Instead, the disagreement expressed in the request to review reflects general dissatisfaction with the outcome, which is not a reviewable error.

70. To conclude, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings. Accordingly, the Landlord's request to review is denied.

It is ordered that:

1. The request to review order LTB-T-092707-25 issued on February 11, 2026 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on February 25, 2026 is cancelled.
3. The stay of order LTB-T-092707-25 is lifted immediately.

April 30, 2026
Date Issued

Elle Venhola
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.