



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

Citation: Toronto Community Housing Corporation v Macrae, 2026 ONLTB 33266

Date: 2026-05-07

File Number: LTB-L-025603-25-RV-IN2

In the matter of: 1409, 31 GILDER DR
SCARBOROUGH ON M1K4P8

Between: Toronto Community Housing Corporation Landlord

And

Shanetel Macrae Tenant

Interim Review Order

Toronto Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Shanetel Macrae (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex involving the production of an illegal drug, the trafficking in an illegal drug or the possession of an illegal drug for the purposes of trafficking.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The application was resolved by order LTB-L-025603-25 issued on December 9, 2025.

On January 7, 2026, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On January 9, 2026, interim order LTB-L-025603-25-RV-IN was issued, staying the order issued on December 9, 2025.

The review request was heard by videoconference on February 12, 2026.

The Landlord's legal representative, John Edlund, the Tenant and the Tenant's legal representative, Kevin Laforest, attended the hearing.

Determinations:

Request to Review

1. For the following reasons, I find that the Tenant's request for review must be granted. I say this because the order contains a serious error.
 - a) The Procedural Error
2. First, I find that there was a procedural error in the hearing which raises an issue of natural justice.
3. The Landlord's L2 application is based on an N6 notice of termination which alleges that the Tenant breached subparagraph 61(2)(a) of the *Residential Tenancies Act, 2006*, S.O. 2006 (the 'Act'). This section is about an illegal act in the rental unit involving the production, trafficking or production for the purposes of trafficking an illegal substance.
4. There is no dispute that, at the original hearing, the parties put forward an Agreed Statement of Facts (the 'Statement') to the Member. This Statement was uploaded to the Board's Portal and is mentioned in the Order issued on December 9, 2025¹. The problem is that parties disagree about the purpose of the Statement and the Order is unclear regarding its purpose.
5. The Order says, "An agreed statement of facts was filed by the parties, which the Tenant confirmed was substantially correct, including still being in possession of the rental unit. The **hearing focused on section 83 issues** and whether eviction should be granted given the circumstances."² [Emphasis added]
6. It appears from this paragraph and the rest of the Order that the Member found the parties had agreed that the Tenant breached s. 61(2)(a) of the Act and the "focus of the hearing" was simply whether to grant relief from eviction pursuant to section 83. However, it became clear at the Review hearing that the parties disagree about this.
7. The Tenant says that they drafted the Statement solely based on the contents of the N6 notice, but they intentionally did not include details about whether the Tenant actually breached s. 61(2)(a) of the Act or whether the Tenant agreed that they breached the Act. The Tenant says they were fully prepared to argue this point at the hearing, but the focus of the hearing somehow became section 83 relief instead.
8. The Landlord says that the Statement implied that the parties agreed the Tenant had breached the Act. The Landlord says they intentionally decided not to bring any police witnesses because the Tenant admitted to the breach by agreeing to the contents of the Statement.
9. The problem here is that the Statement fails to explicitly say whether the Tenant breached the Act or whether she agreed that she breached the Act. The Statement simply re-states the contents of the N6, gives more detail about the search warrant that was executed at

¹ See DOC-6046209; "LTB-L-025603-25 - Agreed Upon Statement of Facts.pdf"

² Order LTB-L-025603-25 issued December 9, 2025; paragraph 1

the rental unit, lists the items that the police found and identifies who was criminally charged as a result of the search warrant. While the Statement does say that the Tenant and her son were criminally charged, it does not specifically say that the Tenant actually breached s. 61(2)(a) of the Act or agrees that she breached the Act.

10. This lack of clarity is made worse because the Order fails to make any explicit finding regarding whether the Tenant's son was a Tenant, an Occupant or a Guest. This factor is relevant to the Landlord's application because a different legal test is applied under s. 61(2)(a) depending on whether the person who has committed the illegal act is a Tenant, an Occupant or a Guest. The parties agree that no submissions were made on this point at the hearing and the Member makes no finding about this point in the Order.
11. In short, the Member accepted the Statement without fully canvassing the parties about whether the Statement constituted a finding or an agreement that the Tenant breached the Act. While I understand that Statements of Facts like this are often desirable in order to expedite the hearing process, in this instance I find that the Member's acceptance of the Statement without fully clarifying its contents constitutes a procedural error. I am also satisfied that this procedural error raises an issue of natural justice because neither the Statement nor the Order make any explicit finding that the Tenant breached s. 61(2)(a) of the Act. As this procedural error raises an issue of natural justice, it constitutes a serious error and the Tenant's request for review must be granted.

b) Unreasonable Finding of Fact

12. I understand that the serious error outlined above is sufficient grounds to grant the Tenant's review request. However, for the sake of completeness I will briefly outline at least two other serious errors in the Order issued on December 9, 2025.
13. For the following reasons, I find that the Order contains an unreasonable finding of fact on a material issue and this unreasonable finding of fact would potentially change the result of the order.
14. In particular, at paragraph 9, the Member finds that the Tenant "...knowingly allowed an individual with a **significant and documented criminal history** – her son – to reside in the premises³." [Emphasis added.] The Order also says that the Tenant permitted "a high-risk individual" (her son) to reside in the rental unit⁴. The problem with these statements is that there was no evidence before the Member in support for either one.
15. At the review hearing, the Tenant confirmed that no one actually knows the extent of her son's past involvement with the criminal justice system. No one knows if he was previously charged with any criminal offense, what those possible charges may have been or how those possible charges were resolved. In fact, the parties agree that there was no evidence before the Member regarding her son's past activities other than the Tenant's testimony that she was aware that her son "had prior involvement with the criminal justice system⁵".

³ See Order *LTB-L-025603-25* issued December 9, 2025; para 9

⁴ See Order *LTB-L-025603-25* issued December 9, 2025; para 9

⁵ See Order *LTB-L-025603-25* issued December 9, 2025; para 10

16. As there was no evidence before the Member that the Tenant's son had a "significant" criminal history or that he was a "high-risk individual", I am satisfied that the Member's findings on this point constitute unreasonable findings of fact.
17. I recognize a hearing Member's findings of fact should be given some deference and "a request will not be granted simply because the reviewing adjudicator might have come to a different conclusion about the evidence. Even where it finds a factual error the LTB may not exercise its discretion to review if the error is trivial, does not relate to a material issue in dispute or would not change the result. The LTB must be satisfied that there appears to be no rational connection between the findings of fact and the evidence in the original hearing."⁶
18. The problem here is that the Member's ultimate decision to terminate this tenancy flows directly from the initial finding of fact that the Tenant's son was a "high-risk individual" and the Tenant "...knowingly allowed an individual with a significant and documented criminal history" to live in the rental unit."⁷
19. This connection is clear beginning in paragraph 12 of the Order which says, "...the **tenancy cannot be maintained**. The illegal activity that occurred in the unit was serious, dangerous, and directly connected to an individual whom the Tenant **knowingly allowed to reside there**...the legal responsibility to ensure that her unit was not used for unlawful purposes ultimately rested with her. That responsibility was not met by allowing her son to live in the rental unit and **her knowledge of his past criminal history**."⁸ [Emphasis added]
20. While it is true that much of the remainder of the Order focuses on the seriousness of the illegal activity that took place inside the rental unit, it is clear that the Member anchored the decision to terminate the tenancy in the original finding that the Tenant's son was a "high-risk individual" that the Tenant "knowingly" allowed to live in the rental unit. In the absence of this initial finding, I am satisfied that the potential result would likely have been different and the tenancy preserved.
21. For all of these reasons, I find that the Order issued on December 9, 2025, contains a serious error in that the Member made an unreasonable finding of fact on a material issue which would potentially change the result of the order. As I am satisfied that the Order contains a serious error, the Tenant's request for review must be granted.

c) Error of Law

22. For the following reasons, I find that the Order issued on December 9, 2025, also contains an error of law that constitutes a serious error. The Member applied a legal test that was not relevant to the issue before the Board.
23. Specifically, the Member applied the principle of "general deterrence" when he terminated this tenancy. This is clear from the reasons in paragraph 16 of the Order which says,

⁶ Board's *Interpretation Guideline 8*, "Review of an Order"; "Errors of Fact" paragraph

⁷ See Order *LTB-L-025603-25* issued December 9, 2025; para 9

⁸ See Order *LTB-L-025603-25* issued December 9, 2025; para 12

“In assessing the **principle of general deterrence**, the Board is mindful that its decisions must promote compliance with the Act and discourage conduct that jeopardizes the rights and safety of others. Allowing this tenancy to remain despite the occurrence of serious illegal activity within the unit would **send an inappropriate and harmful message** – that tenants may avoid responsibility for such activity merely by asserting a lack of knowledge. This interpretation would erode accountability, create a precedent that undermines the enforcement of tenancy obligations, and diminish public confidence in the regulatory framework governing residential tenancies.”⁹ [Emphasis added.]

24. There are two things wrong with this paragraph.
25. First, the principle of general deterrence has only very limited relevance to residential tenancy law; it is only mentioned in the Board’s *Interpretation Guideline 16* in the context of whether to order a landlord to pay an administrative fine.
26. Unlike Criminal Law (where the principle of general deterrence is most often employed) the intent of the Act is remedial in nature and is not punitive. This explains why the principle of general deterrence is only applied in the context of an administrative fine - which is designed to punish egregious behaviour by landlords and deter other landlords from similar behaviour. In contrast, the overarching purpose of the Act is tenant protection which means that the concept of general deterrence is irrelevant to the issue of whether to terminate a tenancy.
27. The Board’s reasons in the Order clearly establish that the Member applied the principle of general deterrence to justify terminating this tenancy. This means that the Member applied a legal test that was irrelevant to the issue before the Board and this constitutes a serious error.
28. The second problem with this paragraph is the Member’s finding that “allowing this tenancy to remain despite the occurrence of serious illegal activity within the unit would send an inappropriate and harmful message – that tenants may avoid responsibility for such activity merely by **asserting a lack of knowledge**”. [Emphasis added.] With this finding, the Member is essentially telling tenants that they cannot expect to save their tenancies by “asserting a lack of knowledge” about illegal activity that may have been taking place in their rental unit. However, this is not a correct description of the Board’s discretion in this area.
29. On the contrary, on an application like this, when considering whether to grant relief from eviction pursuant to the requirements set out in section 83 of the Act, the Board can and should consider whether the tenant knew, or ought to have known, about any alleged illegal activity taking place in their unit. This factual finding goes to the heart of whether a conditional order may be appropriate or whether granting complete relief from eviction is justified. It is simply incorrect to imply that a tenant cannot save their tenancy by “asserting a lack of knowledge” about activity in their unit. It is also incorrect to say that accepting this kind of defence from a tenant would “send an inappropriate and harmful message.” Once again, I find that the Member is applying the principle of general deterrence which, for the

⁹ See Order *LTB-L-025603-25* issued December 9, 2025; para 16

reasons already outlined, has only limited relevance to housing law and is completely irrelevant to the question of whether a tenancy should be terminated.

30. As the Member has applied a legal principle that is irrelevant to the issue before him, I find this is an error of law. That means that the Order issued on December 9, 2025, contains a serious error and the Tenant's request for review must be granted.

31. This order contains all the reasons within it and no further reasons will be issued.

32. I am not seized.

It is ordered that:

1. The request to review order LTB-L-025603-25 issued on December 9, 2025 is granted.
2. Order LTB-L-025603-25 issued on December 9, 2025 is cancelled and cannot be enforced.
3. The Landlord's L2 application is ordered to be heard *de novo* on a date to be set by the Board.

May 7, 2026
Date Issued

Laura Hartslief
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.