



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

Citation: Abel-Dakovic v Burke, 2026 ONLTB 37306

Date: 2026-05-07

File Number: LTB-L-015145-26-RV

In the matter of: 1, 70 Parkside Drive
Barrie ON L4N1X1

Between: Edith Abel-Dakovic

Landlord

And

Andrew Burke

Tenant

Review Order

Edith Abel-Dakovic (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Burke (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was resolved by order LTB-L-015145-26 issued on April 29, 2026.

On May 6, 2026, the 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 order under review finds that the Landlord genuinely intends to possess the rental unit for her own residential occupation and terminates the tenancy.

Procedural fairness

2. The Tenant submits that he was denied procedural fairness in the following ways:

- a) No duty counsel was available, the Member did not offer an adjournment or alternative assistance;
 - b) The Tenant was improperly guided while giving his evidence and coached during cross-examination; and
 - c) The Member improperly accepted the Landlord's deficient declaration.
3. The LTB is not responsible for ensuring that Tenant Duty Counsel services ('TDC') is available. TDC is operated independently of the LTB. It is not an error of the LTB when TDC is not provided. The Tenant did not request an adjournment, identify that he has a disability, or request accommodation of any kind. The Member was not required to offer an adjournment and had no reason to do so in any event. The Member was not required to offer the Tenant any kind of assistance other than to understand the process of a hearing. The Member did explain the hearing process to the Tenant.
 4. The Tenant may have meant to say that the Landlord was improperly guided, etc. In any event, the request gives no details as to what conduct the Tenant believes constitutes improperly guiding and coaching and so I am not satisfied that the Member erred by guiding or coaching either of the parties. The hearing recording does not support that the Member improperly assisted either party.
 5. Paragraphs 10 to 18 of the order explain why the Member accepted the Landlord's declaration, as supplemented by testimony.

Alleged errors of law

6. The Tenant submits that the Member erred in law by failing to consider the Tenant's circumstances as required by subs. 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), by failing to apply subs. 83(1) of the Act, and by failing to consider the Landlord's husband's immigration status.
7. Paragraphs 41 to 44 of the order show that the Member considered both parties' circumstances as required by subs. 83(2) and applied subs. 83(1) appropriately. The delay of eviction to May 31, 2026 is within the range of reasonable outcomes and so I am not satisfied that the Member exercised her discretion unreasonably.
8. The Tenant submits that the Member failed to consider that the Landlord's husband cannot legally reside in Canada for one year. No evidence was given at the hearing to establish that the Landlord (a) is married, (b) has a husband who is not a citizen of Canada, or (c) has a husband who is not legally entitled to reside in Canada for a year. It was not an error for the Member not to consider evidence that was not given at the hearing.

Alleged errors of fact

9. The Tenant submits that the Landlord's country of residence and the date that the tenancy commenced are incorrectly stated in the order.

10. Whether the Landlord currently lives in Russia, as stated in the order, or in Germany, as indicated in the evidence, is not relevant to the issues in this application and so although this is an error it is not a serious error.
11. The Tenant states that they moved into the unit on May 15, 2013. The order finds that the tenancy commenced on May 15, 2014. If this is an error it is not relevant to the issues in the application and so it is not a serious error. To the extent that the date that the tenancy commenced is relevant (or not) to the rental period in the tenancy, this issue is addressed at paragraphs 2 to 9 of the order.

Did the Member fail to consider evidence?

12. The Tenant submits that the Member failed to consider that the Landlord served several N12 notices prior to the service of the notice that forms the basis of the Landlord's application. The Member explicitly considered these notices in the order, including at paragraphs 22 and 29.
13. The Tenant submits that the Member failed to consider that the Landlord served a letter, purporting to be an eviction notice, on October 31 2025 and that it was not accompanied by compensation. This letter is not the N12 notice upon which the Landlord's application is based and so it is not relevant that it is not on the LTB's form or that it was not accompanied by compensation.
14. The Tenant submits that the Member failed to consider contradictions in the Landlord's evidence, including that the Landlord gave up her art studio and not her apartment, that she visits Canada regularly, the Landlord's letters contradict her testimony, the ledger contradicts the Landlord's statements about arrears, and the Landlord's husband cannot legally reside in Canada for one year.
15. The Tenant has not established that anything that he has listed as a contradiction is a contradiction. For example, the Tenant has not explained how the Landlord's evidence that she gave up her art studio contradicts that she still lives in a rented apartment. I am therefore not satisfied that the Member erred by failing to consider these alleged contradictions.

Did the Member consider irrelevant factors?

16. The Tenant submits that the Member relied on emotional factors such as the war in Europe when deciding whether the Landlord intends in good faith to move into the unit.
17. There is no indication in the order that the Member relied on any irrelevant factors. The Landlord testified as to her reasons for wishing to move into the unit and the Member considered this testimony. It was appropriate to do so.

Disposition

18. 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.

It is ordered that:

1. The request to review order LTB-L-015145-26 issued on April 29, 2026 is denied. The order is confirmed and remains unchanged.

May 7, 2026
Date Issued

Renée Lang
Vice Chair, 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.