



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

Citation: Bhimani v Kuchmey, 2026 ONLTB 37891

Date: 2026-05-11

File Number: LTB-L-004325-26-RV

In the matter of: 1176 Esdras Ave
Windsor ON N8S2N4

Between: Jay Bhimani Landlord

and

Nicholas Kuchmey Tenant

Jay Bhimani (the 'Landlord') applied for an order to terminate the tenancy and evict Nicholas Kuchmey (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.

This application was resolved by order LTB-L-004325-26, issued on April 8, 2026 and amended on April 28, 2026.

On May 7, 2026, the Landlord 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. 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.
2. The Landlord submits that the presiding Member seriously erred in her determination by relying on adverse inferences from prior discussions about selling the property. It was not an error for the Member to draw adverse inferences from the Landlord's prior discussions about selling the property. The Divisional Court has affirmed that the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord

desires, in good faith to occupy the property¹. Therefore, it was not an error for the Member to draw inference from the Landlord's past behaviour.

3. The Landlord also submits that a serious error occurred as significant evidence to support the Landlord's good faith intention was not introduced at the hearing due to the Landlord's representative's ineffective representation. While this may be an issue for the Law Society of Ontario, it does not constitute a serious error in the order or the proceedings.

4. Interpretation Guideline 8 - Review of an Order states:

A review is not an appeal or an opportunity to change the way a case was presented. The purpose of the review process is not to provide parties with an opportunity of presenting a better or different case than they did at first instance. There is nothing in the record or in the request for review to support a determination that the Member applied improper principles in assessing the evidence introduced or that there was insufficient evidence before the Board to support its conclusions. I would not interfere with the assessment of the evidence by the Member of first instance, who had the opportunity of observing the witnesses and of hearing the evidence in its totality. [TSL-51694-14-IN-RV \(Re\)](#), 2015 CanLII 23959 (ON LTB) at para 10

5. A review is not an opportunity to reargue a case in hopes of a different outcome nor is it an opportunity to present evidence and submissions that could and should have been presented at the original hearing. There is no indication that the Member applied improper principles in assessing the evidence introduced in this case or that there was insufficient evidence before the Board to support the Member's conclusions.
6. The Landlord also submits that the presiding Member seriously erred by not considering the totality of the Landlord's mother's medical circumstances. Paragraphs 10 and 11 of the order clearly show that the Member considered the Landlord's mother's medical circumstances and she indicates the Landlord presented a lack of evidence to support a significant change in his mother's medical circumstances. As stated in paragraph 5, a review is not an opportunity to introduce new evidence that ought to have been presented at the original hearing.
7. There is no indication that the Member applied improper principles in assessing the evidence introduced in this case or that there was insufficient evidence before the Board to support the Member's conclusions. The Member considered the inconsistencies in the reasons stated for why his mother required the unit, as well as her medical circumstances in her determination. Additionally, the Landlord did not call their mother as a witness and relied entirely on hearsay evidence. For these reasons, I cannot find that the Member's finding was unreasonable or based upon insufficient evidence.
8. The Landlord also submits that the presiding Member seriously erred in denying eviction on section 83(3) of the *Residential Tenancies Act, 2006* (the 'Act') because she declined to make findings with respect to the maintenance issues. This is a mischaracterization of the Member's determinations in the order. The Member does not decline to make

¹ *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.)

determinations on the maintenance issues; in fact she explicitly makes a finding that there are outstanding maintenance issues. What she declines to make a finding on is with respect to whether the Tenant restricted access to the Landlord to complete repairs.

9. Nevertheless, even if there is an error with respect to the Member's analysis and determinations as they relate to mandatory refusal under section 83(3) of the Act, it is not a serious error because it would not change the outcome. The Landlord's application was ultimately dismissed because the Member was not satisfied that the Landlord's mother genuinely intends to occupy the unit.
10. As the Landlord has failed to establish that there is a serious error in the order or that a serious error occurred in the proceedings, the request to review must be denied.

It is ordered that:

1. The request to review order LTB-L-004325-26, issued on April 8, 2026 and amended on April 28, 2026, is denied. The order is confirmed and remains unchanged.

May 11, 2026
Date Issued

Candace Aboussafy
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.