



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

Citation: Lui v CHAN, 2026 ONLTB 40576

Date: 2026-05-21

File Number: LTB-L-088298-25-RV

In the matter of: 332, 18 UPTOWN DR
MARKHAM ON L3R5M5

Between: Raymond Tin Hang Lui Landlord

And

LAI HA CHAN Tenant
KA WAI SHUM

Review Order

Raymond Tin Hang Lui (the 'Landlord') applied for an order requiring LAI HA CHAN and KA WAI SHUM (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was resolved by order LTB-L-088298-25 issued on April 23, 2026.

On May 19, 2026, the Landlord requested a review of the order.

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

Determinations:

1. By way of background, the presiding Member dismissed the Landlord's damage claim related to a water leak in the rental unit.
2. In the review request, the Landlord asserts the April 23, 2026 order contains a serious error. Specifically, the Landlord believes the Member made errors of law and fact and misapplied the balance of probabilities test and failed to properly assess the evidence.
3. 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.
4. To summarize, the Landlord takes issue with the fact that the Member found that the Landlord failed to lead sufficient evidence that the Tenants caused an unnecessary delay

in reporting the leaking to the Landlord or the Tenants caused the drainage issue that also affected the kitchen.

5. In my view, the Member provides a very detailed analysis of the evidence led by the parties at the hearing. For example, the Member's conclusion that the fur found in the pipe was not connected to the Tenants was based on the Landlord's own witness. At paragraph 21 of the order, the Landlord's contractor could confirm neither the type of fur nor the source of the fur. Therefore, the Member's conclusions at paragraph 28 were based on the assessment of the evidence at the hearing. It was a reasonable conclusion that the Landlord led insufficient evidence that the pet hair caused the clog in the drain or that the clog came from the Tenants.
6. The Member was not required to apply any further analysis on this matter or inference as the oral evidence led by the Landlord's witness was conclusive and the Member's decision falls within a reasonable range of outcomes.
7. With respect to the claim that the Member rejected the contractor's evidence is not supported by the order. The Member clearly heard the Landlord's total evidence and it was precisely this evidence that led to the ultimate finding. The evidence was clear; the Landlord did not prove on a balance of probabilities that the Tenants behaviour caused the leaking in the unit. It was the Landlord's witness's evidence that the furball could have come from other units in the building.
8. The Landlord also challenges the Member's finding that the Tenants did not cause any unreasonable delay and believes this constitutes a misapprehension of evidence.
9. I disagree. The order clearly sets out why the Member found the Tenants did not cause a delay which would have caused undue damage. The Member considered that the first incident was discovered by the Tenant on September 7, 2025. There was no evidence of a leak and no further issue on September 11, 2025. There was no reason for Tenants to contemplate a more serious issue. The Member then found the Tenants acted reasonably when they next discovered the issue within 24 hours of becoming aware of the leak. In my view, there is a logical connection between the timeline of events to support the Member's conclusion that the Tenants did nothing to exacerbate the issue.
10. While the Landlord believes the Member should have arrived at a different conclusion as a result of their evidence related to excessive pet hair in the unit that may have caused the clog in the drain, the order is based on the fact that the Landlord led insufficient evidence to support the proposition that the Tenants were the cause of the issue.
11. It therefore cannot be said that the Member's findings were inconsistent or that the order falls outside the normal range of outcomes. The Member makes a logical and reasonable finding that the Landlord did not meet the burden to prove that it was the pet hair from the Tenants' unit that caused the issue and this was based on the Landlord's own evidence.

12. The Board has published Guideline # 8 entitled “Review of an Order” to assist landlord and tenants to understand how the Board normally approaches issues on a request for review. It is not binding on me but I find it useful and choose to follow it. It says that a serious error may include “an error of fact which was material to the decision, and which was clearly an unreasonable finding considering the evidence which was before the Member”. The error of fact that the request for review seeks to challenge is the Member’s finding that the Tenants were not liable for the claimed damage. There is nothing in the request for review that would indicate why such a finding by the Member was unreasonable; given the Landlord’s own witness supported this claim. I am of the view that not only was the Member’s finding reasonable, but she was given no real choice in the matter because of the Landlord’s failure to lead evidence to the contrary.
13. Additionally, I cannot find the order contains an error in law. The Member applied the correct legal test, the balance of probabilities test and arrived at a conclusion based on the evidence led by the parties.
14. When a party files an application with the Board, they have the burden of proving their allegations on a balance of probabilities. In this matter the hearing Member based the decision on the evidence provided by the parties. It is a basic fundamental of the legal process that the decision maker may prefer the evidence of one party over the other. This fundamental does not constitute a serious error in law or the process provided the decision maker has a justifiable reason for the preference. In this case the hearing Member had ample reasons for the belief that she had based on the evidence provided by the parties. She provided her reasons for doing so in the original order.
15. As a result of all of the above, I am not satisfied that there may be a serious error in the order or that a serious error occurred in the proceedings and the Landlord’s request for review shall be dismissed accordingly.

It is ordered that:

1. The request to review order LTB-L-088298-25 issued on April 23, 2026 is denied. The order is confirmed and remains unchanged.

May 21, 2026
Date Issued

Dana Wren
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.