



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

Citation: Mushtaque v Agha, 2026 ONLTB 44574

Date: 2026-06-15

File Number: LTB-L-075991-25-RV

In the matter of: BSMT. ROOM 2, 12 WINDY WAY
MAPLE ON L6A3G9

Between: Asia Mushtaque Landlord

And

Nusrat Agha Tenant

Review Order

Asia Mushtaque (the 'Landlord') applied for an order to terminate the tenancy and evict Nusrat Agha (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.

This application was resolved by order LTB-L-075991-25 issued on February 2, 2026.

On February 14, 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 February 20, 2026 interim order LTB-L-075991-25-RV-IN was issued, staying the order issued on February 2, 2026

This review request was heard by videoconference on June 3, 2026.

The Tenant, the Landlord and the Landlord's legal representative, F. Bhatti, attended the hearing.

Determinations:

1. The Tenant submits the Board erred by failing to apply the doctrine of res judicata to the Landlord's application, and by failing to afford the Tenant procedural fairness at the December 1, 2025 Board hearing. Based, however, on the submissions and evidence introduced at the review hearing, I am not satisfied a serious error occurred in the proceeding or that there is a serious error in the order.

Res Judicata

2. In support of her review submission, the Tenant relies on Board order LTB-L-037966-25, issued on August 27, 2025 and upheld on review in review order LTB-L-037966-25-RV, issued on September 4, 2025.
3. Order LTB-L-037966-25 dismisses an earlier application the Landlord filed with the Board to terminate the tenancy because the Landlord requires vacant possession of the rental unit for the Landlord's son's residential use. The August 27, 2025 order finds that the declaration the Landlord filed with the Board pursuant to subsections 71.1(1) and 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') does not comply with the Act's requirements. Specifically, the Landlord's son's declaration does not declare that the son requires the rental unit for a period of at least one year.
4. The Board notes at paragraph 12 that the Landlord's son did not attend the August 21, 2025 hearing to give evidence of his intended use of the property. In *Sertic v. Mergarten*, 2017 ONSC 263 (Div. Ct.), the Divisional Court affirmed that a person described in subsection 48(1)(a), (b), (c) or (d) of the Act may give viva voce evidence at a Board hearing to supplement information in an otherwise incomplete declaration made under subsection 72(1) of the Act.
5. Since the Landlord's son's declaration did not comply with the Act's requirements, and the Landlord's son was not available to cure the omission in the declaration at the August 21, 2025 hearing, the Board dismissed the Landlord's application pursuant to subsection 72(1)(a) of the Act.
6. It is important to note that the Board's focus in orders LTB-L-037966-25 and LTB-L-037966-25-RV was on the technical requirements of the Act, and not on the Landlord's and her son's intentions with respect to the rental unit. At the review hearing, the Landlord agreed that neither Board order considered whether the Landlord and her son require in good faith the rental unit for the son's own residential use.
7. There was, therefore, no final finding on the merits of the Landlord's application in orders LTB-L-037966-25 and LTB-L-037966-25-RV. The doctrine of res judicata accordingly was not applicable when the Board heard and considered this application on December 1, 2025.

Procedural Fairness

8. At the review hearing, the Tenant testified that her inexperience with Board proceedings resulted in an unfair hearing on December 1, 2025. The Tenant explained that she mistakenly believed the Board would review and consider all the material the Tenant disclosed to the Landlord and filed with the Board to resolve the application. The Tenant therefore did not bring any of her material to the Board's attention at the hearing, leading the Board to find, at paragraph 16, that the Tenant did not have reliable evidence to support her suspicion that the Landlord was acting in bad faith.
9. While I am mindful of the Tenant's submissions, the Divisional Court affirmed at paragraph 11(b) in *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.): "Procedural fairness is assessed on an objective standard." Additionally, as the Divisional

Court affirmed in *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 (Div. Ct.), a party to a Board application is required to exercise reasonable diligence to prepare for and participate in a Board hearing. This includes becoming familiar with the Board's processes and procedures.

10. In the present case, the Tenant did not introduce evidence at the review hearing of her efforts to prepare for the December 1, 2025 Board hearing, and I am accordingly not satisfied that the Tenant exercised reasonable diligence in the circumstances.
11. Despite the Tenant's lack of familiarity with the Board's process, the February 2, 2026 Board order shows that the parties were aware of the issues to be determined arising from the Landlord's application, and that the parties exercised the right to address those issues. The order, for example, identifies and summarizes the Tenant's testimony that guided the presiding Board Member's findings and exercise of discretion to postpone enforcing the eviction until March 31, 2026.
12. The parties were therefore afforded procedural fairness, as described in section 183 of the Act, and no error occurred in the Board proceeding.
13. Although the Tenant disagrees with the result in LTB-L-075991-25, the Member's findings are based on the evidence introduced at the hearing and the findings are therefore rational. The Member also considered relevant and appropriate factors when he decided to postpone the eviction until March 31, 2026. The Member's exercise of discretion was therefore also rational, and not arbitrary or capricious. In the circumstances, the Member's findings and exercise of discretion are entitled to deference.
14. The Tenant therefore has not shown that a serious error may have occurred in the Board proceeding, or that there may be a serious error in the December 1, 2025 order. The Tenant's request to review the order must accordingly be denied.

It is ordered that:

1. The request to review order LTB-L-075991-25, issued on February 2, 2026, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on February 20, 2026 is cancelled. The stay of order LTB-L-075991-25 is lifted immediately.

June 15, 2026
Date Issued

Harry Cho
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.