



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

File Number: LTB-L-105756-25-RV

In the matter of: 203, 33 ROBINSON ST
HAMILTON ON L8P1Y8

Between: Homestead Land Holdings Limited Landlord

And

Gary Gilks Tenant

Review Order

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Gary Gilks (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-105756-25 issued on March 4, 2026.

On March 19, 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 March 19, 2026 interim order LTB-L-105756-25-RV-IN was issued, staying the order issued on

This application was heard by videoconference on May 5, 2026.

The Landlord's Legal Representative Crystal Sankey and the Tenant attended the hearing.

The Review Request

Determinations:

1. On the basis of the submissions made in the request, I am satisfied that the Tenant was not reasonably able to participate in the proceeding.
2. The Tenant testified that he signed into the hearing room on the morning of the hearing, and his microphone was not working. He testified that the moderator instructed him to call back into the block at 12:30pm as his hearing was scheduled for 1:00pm. However, he misunderstood this instruction and took her to mean that she was going to call him at 12:30pm.

3. He testified that he did not initially become concerned when the moderator did not call at 12:30pm because he had overheard the Member say that he had a very busy schedule and some cases may need to be rescheduled that day when he had initially joined the hearing block in the morning.
4. He testified that he became curious as to why the moderator had not called him back and rejoined the hearing room around 1:30pm and was informed that his matter had been heard on an uncontested basis.
5. He testified that there was no other reason he was prevented from participating in the proceeding but noted that he is on medication for Parkinsons which impacts his focus.
6. The Landlord's Legal Representative noted that the Tenant has been before the Board on 4 or 5 prior occasions and has never had trouble calling in for other proceedings. She noted that the instructions on the Notice of Hearing are clear, and the review should not be granted on the basis of the Tenant's misunderstanding.
7. The question of what the phrase "not reasonably able to participate" means has been before the Divisional Court in a number of appeals from Board orders.
8. In *King-Winton v. Doverhold Investments Ltd.*, [2008] O.J. No. 4697 (Ont. Div. Ct.) the tenant did not attend the hearing because she misread the notice of hearing and had the date of the hearing mixed up. The Divisional Court ruled the Board should have granted her request to review on the grounds of not reasonably able to participate as the tenant genuinely intended all to participate in the proceeding and otherwise she would be denied the right to be heard. The Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
9. In *Sutherland v. Lamontagne*, [2008] O.J. No. 5763 (Ont. Div. Ct.) the tenant in that case dialled in for a telephone hearing five minutes late and the Court held the Board should have granted the subsequent request for review
10. in *Decosse v. Isles of Innisfree Non Profit Homes*, [2012] O.J. No. 964 (Ont. Div. Ct.) the tenant attended multiple hearing dates but on the final day arrived 20 minutes late. The Court held that the review request should have been heard.
11. What all of the Divisional Court cases have in common is the notion of fairness: a party who does not know about a hearing should have a chance to participate in a new one; a party that knows about the hearing and genuinely wants to participate but does not, should still have an opportunity to be heard. This review involves the latter kind of case.
12. I am prepared to accept the Tenant's testimony that he joined the hearing block in the morning rather than the afternoon, and genuinely believed that the moderator has instructed him that she would call him back when his matter was to be heard. While the Tenant has been before the Board in the past, I am prepared to accept that this was a genuine misunderstanding on his part which may have been exacerbated by his Parkinson's diagnosis and the medication he takes for treatment of this ailment.
13. I note that the Tenant's actions demonstrated a genuine intention to participate in the proceeding and note that he called back into the hearing block around 1:30pm. The original order indicates the matter was heard on an uncontested basis at 1:33pm. So it is

very likely the Tenant missed the proceeding by only a few minutes similar to the parties in *Sutherland* and *Decosse*.

14. Therefore, I accept that the Tenant was aware of the hearing and genuinely wanted to participate but could not and am satisfied that it is appropriate to grant the request to review.

It is ordered that:

1. The request to review order LTB-L-105756-25 issued on March 4, 2026 is granted. The order is cancelled and replaced with the following.

The L1

Determinations:

1. At the hearing the Tenant wished to raise issue under Section 82 of the Act. The Tenant sent to the Board and the Landlord a series of emails one of which contained a series of zipped folders containing his evidence related to these issues.
2. The Landlord's Legal Representative indicated that the same issues the Tenant wished to raise under section 82 of the Act were heard by the Board on March 5, 2026, and an order was issued March 19, 2026, LTB-T071658-24. The Landlord's Legal Representative explained that this prior Application concerned the same issues and the same evidence as the Section 82 raised in this proceeding.
3. The Tenant testified that he was not exactly sure what was and wasn't heard in that hearing but nonetheless the adjudicator never saw his data because she said the LTB did not deal with zip files and claimed that they had a virus. He took that to mean that the LTB had a virus because his files did not.
4. I am satisfied that the section 82 issues the Tenant intends to raise were already heard and considered by the Board in LTB-T071658-24. I note that matter was heard on its merits and not dismissed on a preliminary basis. Therefore, I find that the Section 82 issues have been considered by the Board in LTB-T071658-24 and are res judicata for the purpose of this proceeding.
5. I am also note satisfied that the Tenant has properly raised issues under Section 82 of the Act for the purpose of this proceeding. According to the Tenant's own testimony the prior Member had determined that the Tenant's evidence (which is the same for both matters) may contain a virus, and I find it would be inappropriate to open the zip folders in this proceeding. Therefore, I am not satisfied that the issues have been appropriately raised, as it appears the TTs disclosure may not be able to be safely accessed by the Board.
6. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
7. As of the hearing date, the Tenant was still in possession of the rental unit.

8. The lawful rent is \$1,281.53. It is due on the 1st day of each month.
9. Based on the Monthly rent, the daily rent/compensation is \$42.13. This amount is calculated as follows: $\$1,281.53 \times 12$, divided by 365 days.
10. The Tenant has not made any payments since the application was filed.
11. The rent arrears owing to May 31, 2026 are \$15,119.12. At the hearing the Tenant alleged that he had paid rent for the month of June 2025 which was not reflected by the Landlord, and the arrears should be in the region of \$14,000.00. However, the Tenant did not provide any documentation in support of this alleged payment. I note that the Landlord cannot prove a negative (that the rent has not been paid) and I would expect the Tenant to provide some documentation or other proof (bank records, rent receipts, cheque copies, or E-Transfer records) in support of the alleged payment and note that as this is a review proceeding the Tenant has had ample time to produce this documentation. Therefore, I am satisfied that the arrears are \$15,119.12.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$1,214.97 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
14. Interest on the rent deposit, in the amount of \$32.02 is owing to the Tenant for the period from February 2, 2025, to May 5, 2026.
15. At the hearing the Landlord sought a standard order, and the Tenant sought a delay of 3-4 months so that he could move. He testified that he has Parkinson's which makes his life a living hell and testified that he was prepared to move last summer and had asked the Landlord for a compensation package as he could have been out very quickly.
16. He testified that he has many belongings in the rental unit as he worked from home for years and has lived in the rental unit for 26 years and for over 300 months, he was never late paying rent. He testified that the Landlord's actions have impacted his ability to hear, and he has no quiet enjoyment of the unit, and that he believes the Landlord has been vindictive ever since he brought a prior Application to the Board years ago over a heating issue.
17. He testified that he receives around \$1,200.00 - \$1,300.00 per month from a pension. He testified that he was prepared to pay and had the funds available. However, he is ultimately looking to vacate the rental unit and requires time to do so.
18. Based on the Tenant's own testimony the tenancy is not viable on a long-term basis, as the rent is roughly equal to his monthly income. Accordingly, I find that a payment plan or a lengthy delay would be prejudicial to the Landlord.
19. Given that the Tenant is a longstanding Tenant living with Parkinson's, I am satisfied that a delay is appropriate. However, as the tenancy is no longer viable, I find that it would be unduly prejudicial to the Landlord to delay three to four months. In my view the appropriate

balance is a delay to June 15, 2026, to recognise the Tenant's personal circumstances and the length of the tenancy while minimizing prejudice to the Landlord.

20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 15, 2026, pursuant to subsection 83(1)(b) of the Act.
21. As this ruling was delivered orally, the eviction shall not be extended as a result of the date of this order.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$16,586.65 if the payment is made on or before June 15, 2026. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after June 15, 2026 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before June 15, 2026.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,987.25. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$42.13 per day for the use of the unit starting May 6, 2026 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before June 15, 2026, the Tenant will start to owe interest. This will be simple interest calculated from June 16, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 15, 2026, then starting June 16, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after June 16, 2026.

June 15, 2026
Date Issued

Reid Jackson
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on December 16, 2026 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before June 15, 2026

Rent Owing To June 30, 2026	\$16,400.65
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$16,586.65

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$14,048.24
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,214.97
Less the amount of the interest on the last month's rent deposit	- \$32.02
Total amount owing to the Landlord	\$12,987.25
Plus daily compensation owing for each day of occupation starting May 6, 2026	\$42.13 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	