

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

**File Number:** TET-15693-21-RV

**In the matter of:** 2, 235 ASH STREET  
WHITBY ON L1N4B4

**Between:** Jay Beswick Tenant

**and**

Steve Prendergast Landlord

**Review Order**

Jay Beswick (the 'Tenant') applied for an order determining that Steve Prendergast (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was resolved by order TET-15693-21 issued on May 26, 2021.

On June 15, 2021 the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 30, 2021 interim order TET-15693-21 -IN was issued, staying the order issued on May 26, 2021.

The request was heard by videoconference on August 31, 2021.

The Tenant and the Landlord attended the hearing.

**Determinations:**

**REQUEST TO REVIEW**

1. The Tenant's request to review alleges that the Tenant was not reasonably able to participate at the case management hearing held on May 17, 2021 because he did not receive the notice of hearing by e-mail nor did he receive a hard copy in the mail. The Tenant sent an email to the Board and the Landlord after the hearing date once he had discovered he missed it.
2. The Landlord submitted that he did not dispute the Tenant's request and indicated that it was possible the Tenant did not receive the email and was not notified of the hearing date.

3. The Board's records show the notice of hearing was e-mailed to the Tenant on March 24, 2021 at 7:45pm. There is not record of whether a copy was mailed to the Tenant.
4. In *King-Winton v. Doverhold Investments Ltd., 2008 CanLII 60708 (ON SCDC)*, the Courts found, at paragraph 7,

Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less. The tenant has never delayed in pursuing her remedies.

5. Based on the evidence before the Board, I find that the Tenant was not reasonably able to participate at the hearing in May 2021 as he did not receive the notice of hearing nor is there a record of it being mailed to the Tenant.
6. As such, the Tenant's request to review was granted. I proceeded to hear the Tenant's T6 application.

#### T6 APPLICATION

##### Preliminary Issue

7. The Tenant's T6 application was filed on March 9, 2021 pursuant to subsection 29(1) of the *Residential Tenancies Act, 2006* (Act). Section 29(2) of the Act states:

No application may be made under subsection (1) more than one year after the day the alleged conduct giving rise to the application occurred.

8. The Landlord submitted that the Tenant's application should be dismissed as the incidents outlined in the application are beyond the one-year limitation period contained in section 29(2).
9. The Tenant submitted that he did not want to create a hostile relationship with his Landlord, so he delayed the filing of the application but agreed that it was out of time. Furthermore, the Tenant indicated that he signed an agreement on September 2, 2020 agreeing there were no outstanding issues in the rental unit.
10. The date the application was filed was March 9, 2021, which means that it could only include incidents that occurred on or after March 10, 2020. However, given the suspension to limitation periods that occurred between March 16, 2020 and September 13, 2020 (pursuant to Ontario Regulations 73/20 and 457/20 under the *Reopening Ontario [A Flexible Response to COVID-19] Act, 2020*, S.O. 2020, c. 17) issues as far as September 9, 2019 could have been considered if they were on the application.
11. The application before me alleges that the Landlord failed to maintain the driveway around the drainage system that resulted in a flood in the Tenant's unit. This occurred in March 2019 and April 2019. I find that the specific incidents outlined in the Tenant's application all occurred before September 9, 2019 and are therefore out of time.
12. In light of the above, the Tenant's application must be dismissed.

13. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The request to review order TET-15693-21 issued on May 26, 2021 is granted and replaced with the following order.
2. The interim order issued on June 30, 2021 is cancelled.
3. The Tenant's application is dismissed.



**January 5, 2022**  
**Date Issued**

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Sonia Anwar-Ali  
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.