

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

**File Number:** SWL-56048-21-RV

**In the matter of:** 3, 140 WELLINGTON STREET  
LONDON ON N6B2K8

**Between:** Abhay Fernandez

**and**

John Nicholas

I hereby certify this is a  
true copy of an Order dated

**SEPT 22 2022**

Landlord and Tenant Board

Landlord

Tenant

**Review Order**

Abhay Fernandez (the 'Landlord') applied for an order to terminate the tenancy and evict John Nicholas (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.

This application was resolved by order SWL-56048-21 issued on March 17, 2022.

On March 24, 2022, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On April 1, 2022 interim order SWL-56048-21 -IN was issued, staying the order issued on March 17, 2022.

The request was heard by videoconference on May 5, 2022.

The Landlord and the Tenant attended the hearing.

**Determinations:**

**REQUEST TO REVIEW**

**Not Reasonably Able to Participate**

1. This request for review relies on s. 209(2) of the *Residential Tenancies Act, 2006* (the 'Act'); the Tenant says he was not reasonably able to participate in the hearing on February 14, 2022 because while he checks his mail once a week, he did not receive the notice of hearing. The Tenant also states that he did not receive the notice of termination.

2. The question before the Board is whether the Tenant genuinely intended to participate in the hearing scheduled for February 14, 2022.
3. The Tenant believes the reason he did not receive the Notice of Hearing was due to his mailbox being insecure and accessible to other tenants. The Tenant describes the residential complex as a house with three units.
4. The Tenant testified that his mailbox is located at the front of the house and he is at the back. he later testified that the mailbox moved to the side of the apartment. He also testified that he is aware that his hydro bill is missing.
5. The Tenant testified that he did not report the issue of the missing mail to the police nor did he advise the Landlord of this issue, as the Landlord is normally absent from the rental unit and harasses him. No documentary evidence was produced in the form of pictures of the state of his mailbox to support his assertion.
6. On cross-examination, the Tenant confirmed that he had contacted community legal services and had retained Rezin Mubarak for the hearing on February 14, 2022 who contacted the Landlord on the Tenant's behalf on February 8, 2022 and was subsequently fired by the Tenant. The Tenant also confirmed that he became aware of the missing hydro bill when he received a "red thing" in his mailbox.
7. The Tenant seeks that his review be granted.

#### Landlord's Response

8. The Landlord opposes the Tenant's request to review as the Landlord testified the mailbox belonging to the Tenant is located right beside the entrance to the Tenant's rental unit. He testified that on February 8, 2022, the Tenant's legal representative reached out to him with respect to the hearing on February 14, 2022.
9. The Landlord also confirmed that at no point during the tenancy was the Landlord made aware of an issue with the mailbox or that it was not in working condition by the Tenant.
10. The Landlord submits the Tenant intentionally missed the hearing on February 14, 2022 and that this was a delay tactic on the part of the Tenant.
11. The Landlord seeks that the Tenant's request be denied and the stay be lifted immediately.

#### ANALYSIS

12. On any request for review before the Board the person requesting the review bears the burden of proof. This means the Tenant must lead sufficient evidence to establish that it is more likely than not that he was not reasonably able to participate in the hearing on February 14, 2022. Here, I am not satisfied that the Tenant's mailbox was in a state of disrepair or that he did not receive the notice of hearing.

13. I say this because the Tenant's own evidence confirms that he retained a representative for the hearing on February 14, 2022. This means that the Tenant was aware of the application before the Board and the hearing date but chose not to appear.
14. I also say this because if the Tenant's mailbox was not working, a reasonable person would inform the Landlord and/or the police for theft of mail or issues related to the mail but the Tenant did neither of these actions.
15. In *Bell v. Peel Living* [2005] O.J. No. 6361, the Divisional Court found, at paragraph 7, the following:

[7] It is, of course, open to a trier of fact to reject evidence he finds lacks credibility. However, in our view, in circumstances such as this, it is incumbent upon the trier of fact that to provide some indication of the basis for that finding. The reasons need not be lengthy. However, the tenant is entitled to know the reasons her evidence was rejected as untruthful or unreliable. In the absence of any specific findings on credibility, and any specific reasons for rejecting the uncontradicted evidence before the Tribunal, the tenant has no meaningful right of appeal.
16. In this case, I find, the evidence does not establish that the Tenant had a genuine intention to participate in the proceeding. The Tenant's evidence about the reasons for his absence at the hearing on February 14, 2022 are unclear, but I find it was certainly not due to not receiving the notice of hearing. I say this because the Tenant's evidence on cross-examination that he retained counsel for the matter is in direct contradiction to the Tenant's initial testimony that he did not receive the notice of hearing and the Tenant's request for review that he did not receive the notice of hearing. This discrepancy negatively affects the Tenant's credibility.
17. As a result, the request for review must be denied.
18. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The request to review order SWL-56048-21 issued on March 17, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on April 1, 2022 is cancelled.
3. The stay of order SWL-56048-21 is lifted immediately.



**September 22, 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.