



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

**Citation:** Niagara's Best Inn v Peardon, 2023 ONLTB 34253

**Date:** May 1, 2023

**File Number:** LTB-L-034042-22-RV

**In the matter of:** 35, 5284 FERRY ST  
NIAGARA FALLS, ON L2G1R5

**Between:** Niagara's Best Inn  
  
**and**  
  
Jeremy Scott Peardon

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

**MAY 01, 2023**

Landlord and Tenant Board

Landlord

Tenant

**REVIEW ORDER**

Nigara's Best Inn (the 'Landlord') applied in a L1 application for an order to terminate the tenancy and evict Jeremy Scott Peardon (the 'Tenant') because the Landlord claimed the Tenant failed to pay the rent that he owes.

The L1 application was heard by telephone/video-conference on January 31, 2023 and was resolved by order LTB-L-034042-22 issued on March 6, 2023, which was a voidable eviction order. The Tenant did not attend the L1 hearing on January 31, 2023.

On March 10, 2023, the Tenant filed a *Request to Review an Order*, alleging he was not reasonably able to participate in the January 31, 2023 hearing because he did not receive notice of the hearing.

On March 13, 2023, interim order LTB-L-034042022-RV-IN was issued, staying the L1 order issued on March 6, 2023 and granting a review hearing to determine whether or not the Tenant was reasonably able to participate in the January 31, 2023 hearing.

On April 5, 2023, the Tenant's request for review was heard by telephone/video-conference. The Tenant attended the review hearing and was offered the opportunity to speak to tenant duty counsel before the review hearing started. The Landlord's agent Manshu Babbar (owner) attended the hearing with his legal representative Jordan Nieuwhof.

**Determinations:**

***Preliminary Issue – Tenant's Request for In-Person Hearing Denied***

1. The Tenant asked for an in-person hearing due to the serious nature of the issues on his T2 applications and the L1 application. He also advised he was "computer illiterate" and has difficulty using technology.



2. I note that initially there were some problems maintaining Zoom connection and hearing him (as he had some problems unmuting), but the Tenant was able to use a telephone to call into the hearing. Once he had switched from using wifi and Zoom, to calling into the hearing using a phone, the Tenant participated for the entire review hearing with no more issues.
3. The Tenant submitted that if we were in-person, it would be easier for him to show specific points in his disclosure and evidence, but this would be difficult for him virtually. I noted that since the Tenant had been able to use the Tribunals Ontario Portal (TOP) platform and use communication methods such as email to engage with the Board and the Landlord in the past, should be no reason he could not disclose evidence using these same formats, and to refer to such evidence while participating in a hearing while on the telephone. The request for an in-person hearing was denied as it was deemed the virtual format was adequate to allow the Tenant the opportunity to reasonably participate.

***Preliminary Issue – Tenant’s Request for Adjournment Denied***

4. The Tenant advised he needed to adjourn the review hearing because he still had many documents he wanted to obtain such as police reports. When questioned further, the evidence he was hoping to obtain dealt with issues that are relevant to his T2 applications rather than the issue of not being reasonably able to participate at the L1 hearing, which was the live issue for this review hearing.
5. After considering the factors in Rule 21.8 of the Board’s *Rules of Procedure*, the adjournment request was denied. The Tenant’s T2 applications were severed and adjourned, so the Tenant could prepare more fully and amend those applications if required. The review hearing regarding the L1 application was not adjourned, because there would be more prejudice to the Landlord in delaying the review hearing with any extension of the stay of the L1 voidable eviction order.

***Preliminary Issue – Tenant’s T2 Applications Severed and Adjourned***

6. Also on today’s hearing docket was the first of the Tenant’s 2 T2 applications, (LTB-T-034076-22). That application was adjourned and combined with a subsequent T2 application recently filed (LTB-T-076361-22) because the Tenant required more time to obtain evidence (such as police reports) and to amend his T2 applications (they are currently lacking adequate reasons and details).
7. An interim order was issued separately (dated April 19, 2023) on the adjourned T2 applications, for which I am seized upon their return, and which are both peremptory on the Tenant.



***Not Reasonably Able to Participate***

8. The Tenant claimed he was not reasonably able to participate in the L1 hearing of January 31, 2023. He testified that he did not know the hearing was happening, since he did not receive notice prior to the hearing. He testified that the Landlord never emailed him that the hearing was happening, and nothing was posted to his door.
9. The Tenant also suspected the Landlord only filed the L1 application in retaliation to the T2 issues the Tenant brought against them (such as interfering with vital services and illegal lockout). I note in the TOP portal, that the L1 application and first T2 application were filed within a couple of hours of each other, with the T2 filed first.
10. The Tenant also submitted that he was on house arrest in January and was only allowed out 1 hour a day, with 23 hours spent at the rental unit. Since the Landlord turned off his power, he could not charge his phone at home, and did not have time to charge his phone when he left the house since he only had one hour.
11. The Tenant also advised he had a mail problem that he became aware of when all the mail Ontario Works had sent to him had to be sent back.
12. The Board's file contained a mailing list prepared by Board staff, confirming that the Tenant/Respondent had been sent the L1 Notice of Hearing package on January 14, 2023 by mail to the rental unit address.
13. The *Residential Tenancies Act* (the 'Act') in section 191(f) allows a notice or document to be sufficiently given to a person if it is mailed to the last known address where the person resides.
14. The Act also deems mailed notice to be deemed to have been given on the 5<sup>th</sup> day after mailing as per section 191(3).
15. As per section 191 of the Act, and based on the records in the Board's file, the Tenant was deemed to have been "sufficiently given" notice about the L1 hearing as of January 19, 2023 (5 days after Board staff mailed it).
16. The Tenant did not present any evidence that he does not reside at the rental unit. Although he suspected there was a mail problem, he admitted did not report any mail issues to his Landlord during the tenancy, nor did he claim any mail issues on either of his T2 applications. The Tenant submitted that he did not think the mail issues were important for a T2 application.
17. There was nothing in the Board's file from Canada Post indicating that any mail sent to the Tenant was returned as undeliverable.
18. The Tenant did not make any submissions that he took any steps to address his alleged mail issues – such as using a forwarding address, contacting Canada Post, or notifying his Landlord.



### ***Analysis and Findings***

19. Based on the evidence in the Board's file and the Tenant's testimony, I find that the Notice of Hearing package was properly given by the Board to the Respondent/Tenant, using a method of service allowed by the Act (mail to the last known address of where the person resides). Once the Board mailed the Notice of Hearing to the rental unit, it was deemed served after 5 days.
20. The Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The case law from Divisional Court generally instructs the Board that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly, to ensure natural justice, and where a party shows a genuine intent to participate in a hearing but was prevented from doing so, they should be entitled to a hearing through the review process. A party's genuine intent to participate must be borne out by the evidence which clearly demonstrates the party's intent to participate in the hearing.
21. In *Kathryn King-Winton v. Doverhold Investments* 2008 CANLII 60708 (ON SCDC), the Divisional Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less."
22. When I consider the evidence, most notably the actions of the Tenant, I do not find that the Tenant demonstrated a genuine intention to participate in the L1 proceedings. There was no evidence from the Tenant to show he proactively did anything to try to participate in the proceedings.
23. Although the Tenant speculated he had a mail problem because mail from OW had been sent back, this did not convince me that the Notice of Hearing from the Board had also been undeliverable to the Tenant's mailbox. The Tenant never complained of a mail issue despite knowing of ongoing problems with mail such as from OW. There was nothing from Canada Post in the Board's file that the notice to the Tenant had been undeliverable.
24. The Tenant also seemed to expect the Landlord to email him about the hearing ahead of time, or for a notice to be posted to his door. There is no requirement or obligation for a landlord to serve notice about a hearing to a tenant. That role is fulfilled by the Board. Posting a notice of hearing to a rental unit door is not an allowable method of service for this type of document.
25. The Tenant also speculated that throughout January, even if he had received notice of the hearing, he would not have been able to participate in any event since his phone could not be charged because the Landlord turned the power off. I found this submission merely hypothetical. Even without power, a phone, computer, or similar device, it is not uncommon for parties to get an agent, friend, or representative, to call in and make submissions for them at a hearing. I note that for today's review hearing, the Tenant was able to use someone's phone to call in when he initially had problems maintaining wifi to connect by Zoom video conference.



26. According to the Tenant, even though he had ongoing problems with his mailbox, he told nobody about it.
27. The Tenant knew or ought to have known about the Landlord's claims of unpaid rent because the Tenant thought the Landlord was merely retaliating for the serious T2 issues the Tenant had claimed against the Landlord.
28. Although the Tenant claimed he did not get any notice (such as the N4) or the L1 Notice of Hearing, the Board's file, the Landlord's evidence, and the L1 order all show that such notices were served on the Tenant to his rental unit. The Tenant seemed to know about the Landlord's claims about rent arrears owing, since the Tenant speculated the L1 application filing was merely a retaliation to the Tenant's first T2.
29. Rather than showing a genuine intention to participate in the L1 proceeding, to the contrary, I find that the Tenant did not take any actions to show he had a genuine intention to participate. The Tenant did not provide any evidence that he tried to deal with the rent arrears issue until after the L1 order had been issued.
30. On a balance of probabilities, I am not satisfied that the Tenant was not reasonably able to participate in the L1 hearing held on January 31, 2023. I find that based on the testimony and evidence, it is more likely than not, that the Tenant failed to exercise due diligence with respect to the Landlord's application and the Board's proceedings.
31. A lack of due diligence is not grounds to grant a request for review. This has been confirmed by the Courts in *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 CanLII (Div. Ct.) paragraph 8 which states:

If parties are not diligent in dealing with legal proceedings then they cannot demand that a Tribunal waste its resources by rehearing matters a second time. To allow this would undermine the ability of the administration of justice to deliver timely, cost-effective and final orders.
32. Since the Tenant has not proven on a balance of probabilities that he was not reasonably able to participate in the L1 proceedings, the request for review is denied.

**It is ordered that:**

33. The request to review order LTB-L-034042-22 issued on March 6, 2023 is denied. The order is confirmed and remains unchanged.



34. The interim order LTB-L-034042022-RV-IN issued on March 13, 2023 is cancelled and the stay of order LTB-L-034042-22 is lifted immediately (as of the date of this review order, May 1, 2023).

**May 1, 2023**  
**Date Issued**

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**Michelle Tan**  
Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.