



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

**Citation:** Perera v. Keown, 2023 ONLTB 40617

**Date:** 2023-05-24

**File Number:** LTB-L-053425-22-RV

**In the matter of:** Upstairs, 16 McGillivray Court  
Whitby ON L1P1A3

**Between:** Luis Araujo  
Tiana Perera

**And**

Annette Keown  
Mervyn Horner

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

**MAY 24 2023**

Landlord and Tenant Board

Landlord

Tenants

### Review Order

Luis Araujo and Tiana Perera (the 'Landlord') applied for an order to terminate the tenancy and evict Annette Keown ('AK') and Mervyn Horner ('MH', the 'Tenants') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-053425-22, issued on April 26, 2023.

On May 19, 2023, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing.

### Determinations:

1. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant AK submits that there has been a material change in her financial circumstances that will promote a payment plan. AK writes in the review request: "4 days after the hearing my workload opened back up .... I am now back working 5-7 days again as prior to not only my illness but prior to covid and the lockdowns." AK submits that "This definitely has put us in an even better position to honor a repayment schedule".



3. In effect, AK seeks to enter fresh evidence of the Tenants' household's financial circumstances to make another request for relief from eviction under section 83 of the *Residential Tenancies Act, 2006* (the 'Act').
4. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.) (CanLII) [*Lacroix*], the Divisional Court considered whether the tenant's appeal submissions represented relevant evidence that was not reasonably available to the tenant at the Board hearing. In denying the appeal, the Divisional Court rejected the tenant's submission about fresh evidence, finding at paragraph 11: "The proposed evidence is vague and unparticularized". The Court noted that the tenant did not provide reliable, corroborating evidence to support the proposed fresh evidence. The Court therefore concluded that the proposed fresh evidence was not "potentially conclusive on an issue on appeal: *Krizans v. Skurdelis*, 2020 ONSC 4386 (Div. Ct.); *Palmer v. The Queen*, [1980] 1 S.C.R. 759." (Div. Ct.) (CanLII).
5. In this present case, like the proposed fresh evidence in *Lacroix*, AK's description of recent employment "is vague and unparticularized." [*Lacroix*, at paragraph 11.] The Tenant attributes the recent change in her employment schedule on another worker's departure. There is no evidence, however, that the change in AK's employment will continue. AK works as an independent contractor. AK explained at the hearing that her employment hours vary. Following the Divisional Court's reasons in *Lacroix*, without reliable corroborating evidence from AK's employer that AK will earn enough income to promote a reasonable payment plan, I find that AK's description in the review request of her recent employment is not fresh evidence that is "potentially conclusive".
6. I similarly find that AK's description in the review request of the Tenants' household's circumstances is not fresh evidence. Although I am mindful of AK's submissions, evidence of AK's medical issues, and of delays in treatment, was reasonably available to AK at the Board hearing.
7. The hearing recording shows that AK attended and participated in the Board hearing. The recording also shows that AK did not raise a jurisdictional issue at the hearing about adequate service of the Board's notice of hearing. Additionally, AK did not request an adjournment.
8. Since AK was aware of the issues to be determined at the hearing and introduced evidence and submissions in response to the Landlord's application, I find that AK did participate in the Board hearing, and was afforded procedural fairness. The Tenants have accordingly not established that a serious error with respect to natural justice occurred in the proceedings.
9. The Board's application record, which includes the hearing recording, confirms that the Board hearing was held on April 11, 2023. Although the April 26, 2023 order identifies an April 24, 2023 hearing date, I find that this is not a serious error, because the error does not affect the presiding Board Member's findings and exercise of discretion.
10. The Tenants have therefore not shown that a serious error may exist in the order, or that a serious error may have occurred in the proceedings. The Tenants' request to review the April 26, 2023 order will accordingly be denied.



**It is ordered that:**

1. The request to review order LTB-L-053425-22, issued on April 26, 2023, is denied. The order is confirmed and remains unchanged.

A handwritten signature in black ink, appearing to be "Harry Cho", written over a horizontal line.

**May 24, 2023**  
**Date Issued**

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**Harry Cho**  
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.