



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

**Citation:** Walker v Dzelme, 2023 ONLTB 79751

**Date:** 2023-12-07 **File Number:**  
LTB-L-000347-23-RV

**In the matter of:** 65 ROSEDENE AVENUE HAMILTON  
ON L9A1G2

**Between:** Josephine Walker Landlord

**And**

John Dzelme Tenant

### Review Order

Josephine Walker (the 'Landlord') applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was resolved by order LTB-L-000347-23 issued on May 25, 2023 and amended on June 8, 2023.

On June 1, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 5, 2023, interim order LTB-L-000347-23-RV-IN was issued, staying the order issued on May 25, 2023.

This review request was heard in by videoconference on July 4, 2023.

The Landlord, the Landlord's Legal Representative, Francisco Gomez, and the Tenant attended the hearing.

### Determinations:

1. For the reasons set out below, I find that the Tenant has failed to demonstrate that order LTB-L-000347-23, issued on May 25, 2023 and amended on June 8, 2023, contains a serious error of fact or law, or that the Tenant was denied procedural fairness during the hearing process.
2. In the Landlord's application LTB-L-000347-23, the Landlord claimed that the *Residential Tenancies Act, 2006* (the 'Act') does not apply to the tenancy pursuant to section 5(i) of the Act.
3. The Tenant requested a review of order LTB-L-000347-23, submitting that there were serious errors within the order. Specifically, the Tenant claimed that (i) the Tenant was not afforded procedural fairness at the hearing; and (ii) the Board Member overlooked or failed to consider relevant evidence.
4. Essentially the request to review states that :
  - The Tenant had no opportunity to prepare questions for the Landlord's witness and was ambushed legally speaking. Had the Tenant known they were going to mislead the board of truth. the Tenant would have called more witnesses to debunk their lies.
  - The Member erred in material fact to establish a proper timeline of events thereby causing prejudice to the Tenant's submissions as it relates to the existence of the basement kitchen itself.
  - The Member orchestrated the Tenant's submissions to a point where they were not able to present their case freely without being directed to a specific question throughout their submissions.
5. I have listened to the recording of the original April 6, 2023 hearing. The Tenant was present at that hearing and participated fully.
6. The hearing recording does not support the allegations in the Tenant's review request. The Member provided the Tenant with sufficient time to present their evidence and submissions. The Tenant was given ample time to prepare for the hearing and relied on a document brief containing 81 pages. Therefore, I am not satisfied that a serious error occurred in the proceedings.
7. In order LTB-L-000347-23-RV-IN the issues to be determined are:
  - a) Does the fact that the Tenant's kitchen facility is deemed inadequate pursuant to By Law standards deem the Tenant to be required to share a kitchen facility with the Landlord?
  - b) Were the parties required to share a kitchen facility at the commencement of the tenancy?
8. In his testimony, the Tenant stated the kitchen equipment in the unit existed before he moved in and was more than adequate. He stated he was not required to share a kitchen with the

Landlord nor did he ever use the kitchen on the main floor as the unit contained adequate counter space, a fridge, a toaster oven and a hotplate when he moved in. He stated the kitchen area meets the requirements of the City of Hamilton's bylaw.

9. The Tenant relied on *Cowie v. Bindlish*, [2010] ON 2628 ('Cowie') wherein he stated this decision addresses the issue of the kitchen and helps to define the gray area of the application. I disagree. In *Cowie*, the landlord moved into the residential complex after the commencement of the tenancy and therefore has no correlation to the case before me. There is no dispute that the Landlord is the owner of the property and lives there.
10. By way of background, it is well settled law that the unilateral acts of one party to a tenancy agreement cannot make a tenancy agreement exempt from the Act. *Cowie* is one in a series of cases in support of that proposition.
11. In her testimony, the Landlord stated the kitchen equipment was brought into the unit by the Tenant. She stated the Tenant was able to use the kitchen on the main floor and he had used it on occasion although he mostly ate from take out restaurants. She stated the basement was used a family room and the Tenant created his own kitchen facilities.
12. In his submissions, the Landlord's Legal Representative submitted the Tenant brought in his own kitchen equipment with the intention to unilaterally change the terms of the agreement between the parties and create a landlord and tenant relationship.
13. Although the Tenant disagrees with the Board Member's finding, the June 8, 2023 order shows that there was sufficient evidence introduced at the hearing to support the Member's findings, including findings of credibility. In the circumstances, I find that the Board Member's finding that section 5(i) of the Act applies and the kitchen located in the unit was inadequate pursuant to the City of Hamilton's bylaw No. 10-221, Property Standards By Law Section 15, is entitled to deference.
14. Absent a serious error, a review is not an opportunity to reargue your case in hopes of a more favourable outcome. Nor is it an opportunity to present evidence and submissions that could and should have been presented at the original hearing.
15. 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. The Tenant's request to review the order will accordingly be denied.

**It is ordered that:**

1. The request to review order LTB-L-000347-23 issued on May 25, 2023 and amended on June 8, 2023, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on June 5, 2023 is cancelled. The stay of order LTB-L-000347-23 is lifted immediately.

**December 7, 2023**

**Date Issued**

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**Susan Priest**

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.

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