



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

**Citation:** Sullivan v Vassallo, 2023 ONLTB 60935

**Date:** 2023-09-06

**File Number:** LTB-T-015325-22-RV

**In the matter of:** 1, 60 Long Branch Avenue  
Etobicoke ON M8W3J2

**Between:** Mikhaela Sullivan Tenant

**And**

Alex Vassallo Landlord

**Review Order**

Mikhaela Sullivan (the 'Tenant') applied for an order determining that Alex Vassallo (the 'Landlord'):

- entered the rental unit illegally;
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of the Tenant's household;
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was resolved by order LTB-T-015325-22 issued on August 23, 2023 for a de novo videoconference hearing held on June 30, 2023. The Landlord did not participate in the hearing at 9:15 a.m., when the matter was called.

On August 30, 2023, the Landlord requested a review of the order.

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

**Preliminary Issue:**

1. Rule A4.2 provides that the Board may vary a rule on its own initiative, and Rule 1.6 provides that the Board may take any other action it considers appropriate in the circumstances.
2. Rule 26.9 of the Board's Rules of Procedures do not set out who may or may not conduct the preliminary review of the request to review.

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3. Rule 26.13 of the Board's Rules of Procedures provide that the same Member whose order is the subject of the request to review may be assigned to conduct the review hearing.
4. Therefore, I find it appropriate to vary Rule 26.9 to provide that the same Member whose order is the subject of the request to review may also be assigned to conduct the preliminary review.

#### **Determinations:**

5. The Landlord alleges that they were not reasonably able to participate in the hearing that occurred on June 30, 2023. The Landlord alleges that they were out of the country at that time and had not been able to find a representative in time for the hearing.
6. The Board issued the notice of de novo hearing on May 27, 2023 and there is no record of the notice sent to the Landlord having been returned to the Board.
7. The travel itinerary provided by the Landlord indicates that they were outside the country from June 14, 2023, until June 28, 2023. In other words, the Landlord was not outside the country at the relevant time on June 30, 2023 when the de novo hearing was conducted.
8. There is no record of a request to reschedule submitted by the Landlord prior to the hearing. The Landlord did not attend the hearing to seek an adjournment to afford time to find legal representation.
9. The Board notes that a prior hearing had taken place on August 15, 2022 and that there is no record that the Landlord was represented at the hearing. I note that the Landlord referred the Board to LTB-L-031557-22, where the Landlord is also not represented. I am not satisfied that in good faith the Landlord intended to retain legal representation for proceedings at the LTB. The Board Guideline 1 – Rescheduling and Adjourning sets out the Board approach where a party seeks time to allow for representation.
10. The right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date. The Landlord has not provided any

evidence to show what reasonable efforts he may have taken to retain legal counsel. I am not satisfied that in good faith the Landlord intended to retain legal representation for proceedings at the LTB.

11. The Landlord appears to have been in Canada on June 30, 2023 and chose not to participate in the hearing. This apparent lack of diligence to seek to have the hearing rescheduled in advance, delays in retaining legal representation, or failure to attend are not sufficient reasons to refer this request to a hearing.

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12. In *Q Res IV Operatin GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 at paragraph 8, the Divisional Court found that a lack of due diligence was sufficient to deny a review hearing:

Lack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear. In other words, it was not an error in law for the Review Board to find that lack of diligence constituted a reason not to grant the landlord a rehearing. 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.

13. Therefore, based on the review request, I am not satisfied that the Landlord was not reasonably able to participate in the proceedings.

**It is ordered that:**

1. The request to review order LTB-T-015325-22 issued on August 23, 2023 is denied. The order is confirmed and remains unchanged.

**September 6, 2023**

**Date Issued**

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Vice Chair, Landlord and Tenant Board

Robert Patchett

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.