



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

**Citation:** Gutauskas v Ahmad, 2023 ONLTB 32349

**Date:** 2023-04-14 **File Number:**  
LTB-T-042808-22-RV

**In the matter of:** Basement, 75 JESSIE ST BRAMPTON  
ON L6Y1L8

**Between:** John Gutauskas Tenant

**And**

Rene Ahmad Landlord

### Review Order

John Gutauskas (the 'Tenant') applied for an order determining that Rene Ahmad (the 'Landlord') failed to meet the Landlord's maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards.

This application was resolved by order LTB-T-042808-22 issued on March 2, 2023.

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

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

### Determinations:

1. I have listened to the February 27, 2023 hearing recording and I have reviewed the Board's application record. 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 Landlord submits that the presiding Board adjudicator erred by adopting an activeadjudication style during the hearing.
3. Section 25.0.1 of the *Statutory Powers Procedure Act* (the 'SPPA') allows the Board to adopt its own procedures. Rule A3.1 of Tribunals Ontario's common rules of procedure require the Board to interpret Rules in a manner that promotes the fair, just and expeditious resolution of disputes.

4. While the hearing recording confirms that the presiding Board adjudicator directly addressed the parties and their legal representatives during the proceeding, this does not represent a procedural error. To the contrary, the presiding Board adjudicator's actions were consistent with Rule 1.6(n) of the Board's Rules of Procedure.

Order Page 1 out of 2

**File Number:** LTB-T-042808-22

5. By asking the witnesses questions, the adjudicator was able to focus on the relevant issues to be determined. The adjudicator afforded the parties an opportunity to respond to the evidence given and to make submissions on issues of law.
6. I conclude from the hearing recording and application record that the parties were afforded procedural fairness. The presiding Board adjudicator's engagement during the proceeding was consistent with the Board's process and procedures, and does not represent an error.
7. The Landlord submits that the March 2, 2023 order is flawed, because it fails to mention the Landlord's evidence of an agreement the Landlord had with other tenants at the residential complex. The agreement allowed the Tenant to use the bathroom facility in other tenants' rental unit, while the Landlord worked on the Tenant's bathroom.
8. Although the order is silent on the Landlord's evidence of agreements with other tenants about their bathroom facilities, the hearing recording shows that the presiding Board adjudicator did admit and consider it. In *R. v. Sheppard*, 2022 SCC 26 (CanLII), the Supreme Court of Canada affirmed that one may look to the hearing record, which includes the hearing recording, to consider the adequacy of a decision.
9. The recording here reveals that the adjudicator determined that the Landlord's agreements with other tenants did not constitute a reasonable attempt to minimize the Tenant's inconvenience from not having a functioning toilet. At paragraph 8 of his reasons, the presiding Board adjudicator cites the Court of Appeal's decision in *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477 (CanLII), and correctly identifies a landlord's mitigation efforts as part of the contextual analysis to determine whether the landlord has complied with their maintenance and repair obligations under the Act.
10. Since the hearing recording confirms that the adjudicator made in-hearing determinations, and since the March 2, 2023 order demonstrates that the adjudicator based his in-hearing determinations on relevant and binding case law, I find that the Landlord has not shown that a serious error may exist in the order.
11. In the circumstances, the Landlord's request to review the March 2, 2023 order must be denied.

**It is ordered that:**

1. The request to review order LTB-T-042808-22, issued on March 2, 2023, is denied. The order is confirmed and remains unchanged.

**April 14, 2023**

**Date Issued**

\_\_\_\_\_  
Harry Cho

Vice Chair, 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.

Order Page 2 out of 2