



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

**Citation:** Seniorens Haus Concordia, Inc. v Wolf, 2023 ONLTB 31386

**Date:** 2023-04-11 **File Number:**  
LTB-L-002543-21-RV

**In the matter of:** 321, 483 OTTAWA ST S  
KITCHENER ON N2M5H1

**Between:** Seniorens Haus Concordia Inc. Landlord

**And**

Johann Wolf Tenant

### Review Order

Seniorens Haus Concordia and Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Johann Wolf (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Seniorens Haus Concordia and Inc. (the 'Landlord') also applied for an order requiring Johann Wolf (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was resolved by order LTB-L-002543-21 issued on February 21, 2023. The Landlord's Legal Representative, Jane Dean, the Landlord's Agent, Amanda Kroger, and the Tenant attended the hearing on February 1, 2023.

On March 21, 2023, the Tenant requested a review of the order and that the order be stayed until the Tenant's request to review the order is resolved.

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

**Determinations:**

1. In the review request, the Tenant submits that their unstable and poor mental health conditions affected the Tenant's ability to fully comprehend the reasons for eviction and what took place at the hearing. The Tenant submits medical documentation confirming his mental health which I have considered. The Tenant submits he was not provided a reasonable and fair opportunity to participate in the proceedings and be heard on the issues.
2. I have listened to the hearing recording and 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 or that the Tenant was not reasonably able to participate in the proceeding.
3. In *Lacroix v. Central-McKinlay International Ltd.*, 2022 ONSC 2807 (Div. Ct.) (CanLII), the Divisional Court affirmed, at paragraph 11, that a person's "internal thought processes are not relevant to an issue before the court. Procedural fairness is assessed on an objective standard. The subjective state of mind... would only matter in this analysis if there was evidence that [a party] was incapable of participate in the hearing (by reason of factors such as (without limitation) illness, disability or language barrier)." The Divisional Court continued, ruling: "Even in these circumstances, it is incumbent on a party to raise the issue with the tribunal, or for there to be a basis on which the claim of incapability is grounded objectively in events at the hearing."
4. The hearing recording reveals that the Tenant participated at the hearing. The Tenant was able to lead evidence, respond to the presiding adjudicator questions, and make submissions with respect to the issues in the application. The Tenant did not raise the issues with his mental health or inability to comprehend the proceedings during the hearing. Further, nothing in the Tenant's behaviour or in the hearing recording, may form the basis of an objective finding that the Landlord's agent was incapable.
5. The Tenant was provided a reasonable and fair opportunity to participate in the proceedings. The record reflects that matter first came before the Board on July 25, 2022. The record reflects that, at the first hearing, the Tenant requested and was granted an adjournment based on claims of incapacity and inability to secure representation. When the matter returned on February 1, 2023 (7 months later), the Tenant was still selfrepresented. The February 1, 2023 hearing recording also reveals that the Tenant declined to speak with Duty Counsel.
6. The Courts have affirmed that parties must be diligent in dealing with legal proceedings: *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541. In this case, I find that the

Tenant was not diligent. While the Tenant submits that his medical condition manifests in his refusal to seek supports when suggested, this does not reasonably explain why he did not retain representation when the matter returned. This is especially true since the Tenant's first adjournment was granted on claims of the Tenant's incapacity and inability to retain counsel.

7. Based on the submissions made in the review request, the record and the Divisonal Court's decision in *Lacroix v. Central-McKinlay International Ltd.*, the Tenant has not demonstrated that there is a serious error in the order or that a serious error occurred in the proceedings or that the Tenant was not reasonably able to participate in the proceeding. Therefore, the request to review the order must be denied.

**It is ordered that:**

1. The request to review order LTB-L-002543-21, issued on February 21, 2023, is denied.
2. The order is confirmed and remains unchanged.

**April 11, 2023**

**Date Issued**

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Khalid Akram

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.

