



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

**Citation:** MACINTOSH v CARTER, 2023 ONLTB 25584

**Date:** 2023-03-08

**File Number:** LTB-L-065535-22-SA-RV

**In the matter of:** 313, 32 DAVENPORT ROAD  
TORONTO ONTARIO M5R0B5

**Between:** PETER MACINTOSH Landlord

**And**

RYAN CARTER Tenant

2023 ONLTB 25584 (CanLII)

### Review Order

PETER MACINTOSH (the 'Landlord') applied for an order to terminate the tenancy and evict RYAN CARTER (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the consent order issued by the Board on June 29, 2022 with respect to application LTB-L-001817-21.

This application was resolved by ex parte eviction order LTB-L-065535-22, issued on January 10, 2023, 2022. The Tenant filed a motion to set aside the January 10, 2023 ex parte order. The Tenant's set aside motion was heard on February 13, 2023 and resolved by motion order LTB-L-065535-22-SA, issued on March 1, 2023.

On March 4, 2023, the Tenant the 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 13, 2023 motion 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. In this review request, the Tenant disputes the June 29, 2022 consent Board order, LTB-L001817-21. The Tenant believes that the amount in that order – to which amount the Tenant agreed – is incorrect. The Tenant asserts that nine payments made in 2020 show that the Landlord owes the Tenant a credit.
3. At the February 13, 2023 motion hearing, the presiding adjudicator correctly determined that the Tenant should have requested a review of the June 29, 2022 consent order, if the Tenant believes the order contains a serious error.
4. Despite the Tenant's submission at the February 13, 2023 motion hearing, the Board's application record shows that the Tenant did not request a review of the June 29, 2022 consent order, in accordance with Rule 26 of the Board's Rules of Procedure.
5. The Tenant testified at the motion hearing that he asked the Board to re-open the Landlord's application, LTB-001817-21. Neither the *Residential Tenancies Act, 2006* (the 'Act'), nor the Board's Rules of Procedure, however, permits a party to re-open an application for which a final order has been issued. This includes a final order that is issued on the parties' consent following negotiations. Instead, Rule 13.11 only permits a party to ask to re-open a Board mediated agreement.
6. The Tenant's assertion that the June 29, 2022 order contains a serious error represents a collateral attack on that order. The presiding adjudicator therefore correctly focused the parties' evidence and submissions on the Tenant's failure to comply with the June 29, 2022 consent order, and on evidence of the parties' financial and other circumstances for the purpose of considering relief under subsection 78(11) of the Act.
7. The hearing recording confirms findings in the March 1, 2023 order, that the Tenant agreed he did not pay the required amount by the deadline set out in the June 29, 2022 consent order; and that the Tenant did not have reliable evidence of anticipated income in March 2023. The presiding adjudicator's findings of fact are therefore rational.
8. Additionally, the recording demonstrates that the Tenant was afforded – and exercised – the right to participate in the motion hearing by introducing evidence and legal arguments, and by responding to the Landlord's evidence and arguments. The Tenant was therefore afforded procedural fairness. Despite the Tenant's review submission, there is nothing in the hearing recording to suggest the presiding adjudicator was biased, or that a reasonable apprehension of bias exists.
9. Although the Tenant submits in the review request that the adjudicator misinterpreted evidence, the hearing recording and application record show that the adjudicator's findings and conclusions are consistent with the parties' evidence and submissions. That is, the

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findings and conclusions are not capricious. The findings and conclusions are accordingly entitled to deference.

- 10. The Tenant has therefore not demonstrated that a serious error occurred at the February 13, 2023 motion hearing, or that a serious error exists in the March 1, 2023 motion order. The presiding adjudicator correctly addressed the Tenant’s collateral attack against the June 29, 2022 consent order by requiring the parties to focus on the Tenant’s breach of the June 29, 2022 order. Based on the Tenant’s own evidence of his non-compliance with the terms of the order, and his evidence that he did not pay rent to the Landlord in October, November, December 2022 and January 20023, the adjudicator’s decisions to deny the Tenant’s set aside motion and to deny relief from eviction are reasonable.
- 11. In the absence of a demonstrable error, I conclude that The Tenant’s request to review the order must be denied.

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**It is ordered that:**

- 1. The request to review order LTB-L-065535-22-SA, issued on March 1, 2023, is denied. The order is confirmed and remains unchanged.

**March 7, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6

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Harry Cho  
Vice Chair, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.

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