



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

**Citation:** Parker v Tierney, 2023 ONLTB 20481

**Date:** 2023-02-10

**File Number:** LTB-T-069278-22-RV

**In the matter of:** 173 Balsam Street South  
Timmins Ontario P4N2E1

**Between:** Lee Parker Tenant

**And**

Kevin Tierney Landlord

### Review Order

Lee Parker (the 'Tenant') applied for an order determining that Kevin Tierney (the 'Landlord') has collected or retained money illegally. This application was resolved by order LTB-T-069278-22 issued on January 5, 2023.

On January 29, 2023, the Landlord requested a review of the order.

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

#### Determinations:

1. On the basis of the submissions made in the request, I am not satisfied there is a serious error in the order or that a serious error occurred in the proceedings.
2. By way of background, the Tenant brought an application under section 135(1) to the Residential Tenancies Act, 2006 (the "Act") to collect money paid on the Tenant's behalf by ODSP to the Landlord. It is not disputed the Tenant was evicted from the rental unit at the beginning of January 2021 and that the Landlord continued to accept payments from ODSP for 4 months thereafter.
3. The Landlord submits the hearing members failed to take into account the ODSP Policy which purportedly states that "*people with no shelter costs do not receive a shelter allowance*". According to the Landlord, the Tenant was not entitled to seek damages for post-eviction ODSP payments made to the Landlord because the Tenant was not entitled to a shelter allowance. While the Landlord's review request asserts the Tenant was not entitled to "shelter costs", I do not find this alleged fact would entitle the Landlord to keep the obvious overpayment made on the Tenant's behalf. The Order specifically mentions at paragraph 2 the Tenant is requesting that ODSP money be paid to the Tenant so the Tenant



may reimburse ODSP (in order to restore the Tenant’s full ODSP entitlement). The order also shows the hearing members correctly considered the definition of “rent” under s. 2 of the Act which encompasses “any consideration...given...on behalf of a tenant to a landlord...for the right to occupy a rental unit” [emphasis added]. As such, I find the members acted within their statutory authority under section 135 of the Act in ordering that post-eviction rent received by the Landlord be paid to the Tenant.

4. The Landlord also submits the hearing members failed to acknowledge the reason for the Tenant’s eviction from the rental unit; that the hearing members erred in dismissing the Landlord’s photographic evidence purportedly showing damage to the rental unit caused by the Tenant; and, that the members erred in accepting hearsay statements regarding (i) the Tenant’s existing reduced ODSP payments and (ii) a purported unreturned email from the Tenant’s caseworker to the Landlord’s representative.
5. I do not find the hearing members erred in considering hearsay evidence. While the Board must be mindful of the inherent dangers in admitting hearsay evidence given that hearsay evidence can be unreliable, section 15(1) of the *Statutory Powers Procedure Act*, R.S.O. 1990 c S.22 (“SPPA”) makes hearsay presumptively admissible. Further, given the admission the Landlord was accepting post-eviction rent payments on behalf of the Tenant from ODSP, I do not find that refusing to admit the hearsay facts into evidence would have changed the result of the order. I also do not find the members erred in not considering the Landlord’s damages claim. The instant application alleges the Landlord has collected or retained money illegally. As such, it was also appropriate for the Board to limit its findings and analysis to the substantive issues at issue in this application only; any damages claimed by the Landlord would constitute a separate application and was thus not properly before the Board in this application.
6. The Landlord has not established that a serious error may exist in the January 5, 2023 order, or that a serious error may have occurred in the proceedings. The Landlord’s request to review the order must accordingly be denied.

**It is ordered that:**

1. The request to review order LTB-T-069278-22 issued on January 5, 2023 is denied.
2. The order is confirmed and remains unchanged.

**February 10, 2023**  
**Date Issued**

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Peter Nicholson  
Member, Landlord and Tenant Board



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