



## Tribunals Ontario

Landlord and Tenant Board

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

**Citation:** Accommod8u Inc v Zaidi, 2022 ONLTB 13609

**Date:** December 14, 2022

**File Number:** LTB-L-000955-21\_RV

**In the matter of:** 303, 256 LESTER STREET  
WATERLOO, ON N2L 3W5

**Between:** Accommod8u Inc Landlord  
  
and  
  
Syed Muhammad Hamza Zaidi Tenant

#### REVIEW ORDER

Accommod8u Inc (the 'Landlord') applied in a L1 application for an order to terminate the tenancy and evict Syed Muhammad Hamza Zaidi (the 'Tenant') because the Landlord claimed the Tenant failed to pay the rent that the Tenant owes.

The L1 application was heard by telephone/video-conference on June 21, 2022 and was resolved by order LTB-L-000955-21 issued on September 21, 2022, which was a voidable eviction order. The Tenant did not attend the L1 hearing on June 21, 2022.

On October 21, 2022, the Tenant filed a *Request to Review an Order*, alleging he was not reasonably able to participate in the June 21, 2022 hearing because he did not receive notice of the hearing as he was out of the country.

On October 25, 2022, interim order LTB-L-000955-21-RV-IN was issued, staying the L1 order issued on September 21, 2022 and granting a review hearing to determine whether the Tenant was reasonably able to participate in the June 21, 2022 hearing.

On November 17, 2022, the Tenant's request for review was heard by telephone/video-conference. The Tenant attended the review hearing and spoke with tenant duty counsel before the review hearing started. The Landlord's legal representative Gayle St Clair also attended the review hearing.

**Determinations:**

***Preliminary Issue – Tenant’s Adjournment Request Denied***

1. It was initially unclear whether the Tenant was requesting an adjournment or not. He seemed to allude that he was ready and wanted to proceed with the L1 hearing if a review was going to be granted, but that he would like to adjourn and have more time to retain counsel and submit evidence if I did not automatically accept that him being out of the country had resulted in him not reasonably being able to participate at the L1 hearing.
2. I pointed out that the procedure is for a party to first prove they should be granted a review, before being entitled to have a new (*de novo*) L1 hearing, and that the onus is on the requestor to be ready to proceed with a review hearing. I also pointed out that Rule 21.7 of the Board’s *Rules of Procedure* requires a party to request an adjournment at the beginning of a hearing.
3. The Tenant then requested an adjournment. He relayed that when speaking to tenant duty counsel – Mr. Rice, Waterloo region – before this review hearing, he had been advised that duty counsel deals with more procedural issues, but that his circumstances sounded more complicated, so he was told he should contact a specialized clinic such as the Waterloo Regional Clinic.
4. The Tenant explained that he had already talked to a lawyer from a legal clinic before this hearing, but they had “dropped the ball” by failing to represent him or help him with submitting his disclosure on time. The Tenant said the previous lawyer had failed to show up today and told him only 4 or 5 days ago that the Tenant could handle this review hearing himself. The Tenant was unable to clarify whether he had in fact retained someone or if he had merely consulted a legal clinic.
5. The Tenant also submitted that he needed more time to obtain evidence, documents, and disclosure that he wanted to rely on for the review hearing and any new (*de novo*) L1 hearing, if granted. The nature of some of the evidence sought were documents relating to his travel history (ie: stamps on passports), and witnesses such as his parents who could corroborate his submissions, among other things.
6. The Landlord’s legal representative opposed the adjournment request. She submitted that the parties had been in communication with each other for well over a year through multiple emails. She submitted that the Tenant should be prepared for today and that further delay would be highly prejudicial to the Landlord. I note that the rent arrears were over \$16K when the L1 order was issued on September 21, 2022. According to the L1/L9 Information Update Sheet submitted for this review hearing the rent arrears were now allegedly over

\$25K. There were no payments made towards rent arrears since the filing of the L1 application.

7. Section 21 of the *Statutory Powers Procedure Act* (the 'Act') allows me to adjourn a hearing if the adjournment is required to permit an adequate hearing to be held. Rule 21.8 of the Board's *Rules of Procedure* sets out relevant factors I may consider in deciding a request for adjournment.
8. Considering the factors set out in Rule 21.8, I found there would be more prejudice to the Landlord if the review hearing were to be adjourned. The Tenant did not present any submissions how his matter was especially complicated, requiring consultation or a retainer with a specialized legal clinic. By the Tenant's own admission, it seemed he had in fact utilized a legal clinic which had told him they would not attend this hearing and that the Tenant should be able to handle it on his own. The Tenant did not provide clear evidence that he had entered into a retainer agreement with any legal counsel who was supposed to have done work on his behalf (such as submit disclosure or attend today's review hearing on the Tenant's behalf). The Tenant also utilized the opportunity to receive summary legal advice from duty counsel prior to the start of today's review hearing. The right to legal counsel is not absolute. The Act permits an adjournment to have an adequate hearing, not a perfect one. Although the Tenant relayed he was unprepared to proceed with the review hearing today, he provided no reasonable explanation why he was unprepared when he had received notice of the review hearing weeks ago. Based on these factors, the Tenant's request to adjourn the review hearing was denied.

***Preliminary Issue – Tenant Deemed Mentally Competent***

9. Although this did not happen at the beginning of the review hearing to be a "preliminary issue" *per se*, an issue arose regarding whether or not the Tenant had capacity to participate in the hearing.
10. As background, I note that at the beginning and throughout the first three-quarters of the review hearing, there was no indication from the Tenant that he was suffering any anxiety, mental disabilities, health issues, or the like. He spoke clearly, politely, and indicated no problems with either understanding what was being said by others, nor in communicating his own submissions or answering questions. He testified he had travelled to Iraq due to health issues, but did not specifically point to any disabilities or health problems which would impact his ability to participate in the review hearing – at least not in the first three-quarters of the hearing.
11. Approximately three-quarters into the review hearing (which lasted approximately 45 minutes), the Tenant suddenly became more emotional, upset, and declared he was not mentally competent to continue the review

hearing. The Tenant's self-declaration of lacking mental competence occurred notably, around the time he was being asked questions regarding submissions he had made about problems with his mailbox. Around that point in the hearing, the Tenant suddenly declared that he suffers from severe mental disability, has ADHD, severe memory loss, and that he cannot have a hearing alone because he requires a legal representative. The Tenant also relayed that he was feeling very sick, that his head was spinning, and he was feeling very unwell.

12. I relayed that all adjudicators must be aware at all times during hearings, to identify and raise potential mental competency or capacity issues, human rights issues, language barriers, or accommodation issues, whether or not the parties raise it themselves.
13. I explained to the Tenant that based on his interactions, his testimony thus far into the hearing, and his cogent communications, there was no indication any specific accommodation or adjournment needed to be provided.
14. I explained that although people who appear before the Board may have disabilities such as mental disabilities or diagnoses like the ones the Tenant identified (ie: ADHD, anxiety, memory loss, etc), this in and of itself does not necessarily mean a party must be represented or cannot continue their hearing. Likewise, I relayed that some people have had panic attacks, needed to take medication, lie down, etc. during a hearing – but that they may still be able to continue, albeit it at a slower pace with breaks and other measures to ensure their continued participation.
15. Tenant never explained during the outset that he suffered from any mental or health issues which may impact his ability to participate in the review hearing. Instead, the Tenant asked for an adjournment because he had been told his case sounded “more complicated”, not that he needed any kind of support person or legal representation due to mental disability.
16. Although the Tenant self-identified that he was mentally incompetent and lacked mental capacity, I did not find any indication that this was the case. The Tenant was raising his voice and getting more emotional, but opportunities were provided for everyone to speak more slowly, to take breaks if he needed, or to take any measure he needed to help deal with mental anxiety (ie: get water, take medication, etc).
17. After confirming that the Tenant was not experiencing an acute medical emergency (which would have justified stopping the hearing), I deemed that the Tenant did not lack mental capacity to carry on with his hearing. The Tenant was able to continue on, and he answered questions and gave submissions.

***Not Reasonably Able to Participate***

18. The Tenant claimed he was not reasonably able to participate in the L1 hearing of June 21, 2022 because he did not know the hearing was happening. He testified that he did not receive any Notice of Hearing regarding the L1 hearing date because he had been out of the country for many months.
19. The Tenant testified that on March 27 ,2022, he drove his parents to the US. He returned to Canada on April 5, 2022. He then flew to Iraq due to health issues on April 8, 2022. He went from Iraq to the US on May 1, 2022. He remained in the US between May 1, 2022 until he returned to Canada on September 15, 2022. The Tenant testified that it was only after arriving back to Canada in September that he first learned about an eviction after getting a notice from his Landlord, which blind-sided him.
20. The Tenant asked if he could submit travel documents such as stamps on his passport, and to get his parents (who were in another room) to attend the hearing as witnesses to corroborate his claims and dates regarding travel. I did not allow either for two reasons. Firstly, this disclosure had not been made at least 7 days prior to the review hearing as required by Rule 19.1 of the Board's *Rules of Procedure*. There was no reasonable explanation why it was not disclosed on time ("I didn't know I should disclose it" is not a reasonable explanation). Secondly, the Tenant's claims about being out of Canada were unrefuted by the Landlord. I determined that any other evidence on the issue of travel outside Canada would be a duplication of the Tenant's own testimony. I relayed I had accepted as true (credible and reliable) the Tenant's testimony about his travels. Since the Tenant had already given his first-hand testimony about his own travel and whereabouts during 2022, which was uncontested by the Landlord, I did not require duplicative evidence such as passport stamps or witnesses.
21. The Board's file contained a mailing list prepared by Board staff, confirming that the Tenant/Respondent had been sent the L1 Notice of Hearing package on May 19, 2022 by mail to the rental unit address.
22. The Board's file indicated that only mail was used to send the Tenant the L1 Notice of Hearing package. Although the L1 application had included a "mlaurier" email address for the Tenant, service by email was not used by the Board since the Tenant had not provided consent to service by email.
23. The Act in section 191(f) allows a notice or document to be sufficiently given to a person if it is mailed to the last known address where the person resides. The Tenant did not present any evidence that he does not reside at the rental unit. Although he had been travelling for large portions of the year, he admitted the rental unit is his primary residence.

24. The Act also deems mailed notice to be deemed to have been given on the 5<sup>th</sup> day after mailing as per section 191(3).
25. As per section 191 of the Act, and based on the records in the Board's file, the Tenant was deemed to have been "sufficiently given" notice about the L1 hearing as of May 24, 2022 (5 days after Board staff mailed it).
26. There was nothing in the Board's file from Canada Post indicating that any mail sent to the Tenant was returned as undeliverable.
27. The Tenant testified that he did not use the rental unit address as his mailing address. He testified that he had experienced problems with his mailbox since the start of his tenancy, so he used his sister's address in Mississauga for mail.
28. The Tenant admitted he had never told his Landlord about any mailbox problems. The Tenant also admitted he had never given his sister's mailing address to the Landlord to use instead.
29. The Tenant further testified that he had experienced mailbox problems where it was "always unlocked and left open".
30. The Tenant admitted he had never told his Landlord nor Canada Post about issues regarding his mailbox being unlocked or left open.
31. The Tenant admitted he made no arrangements to deal with his mail (such as forwarding mail to his sister's or any other address, or having a friend pick up his mail) during his extended travels outside the country.
32. The Tenant submitted that since he was not in Canada for nearly 6 months of this year, he did not receive his mail and did not get any notice about the L1 hearing. He submitted that this was unfair since he had no opportunity to participate at the L1 hearing since he did not even know it was happening.
33. The Tenant admitted that he knew rent had not been paid. He testified that he had intentionally withheld rent from the Landlord due to many problems and issues he had experienced with the Landlord dating back to the very start of the tenancy.
34. The Landlord's legal representative advised that the Landlord and Tenant had shared email communication with each other regarding rent arrears and issues for "well over a year".

### ***Analysis and Findings***

35. Based on the evidence in the Board's file and the Tenant's testimony, I find that the Notice of Hearing package was properly given by the Board to the

Respondent/Tenant, using a mode of communication sanctioned by the Act (mail to the last know address of where the person resides). Once the Board mailed the Notice of Hearing to the rental unit, it was deemed served after 5 days.

36. According to the Tenant's evidence, he did not actually read or receive the Notice of Hearing for 3 reasons: he was out of the country, he had ongoing problems with his mailbox, and he was using his sister's address instead of the rental unit for mail.
37. The Board's power to review a decision may be exercised if a party to a proceeding was not reasonably able to participate in the proceeding. The case law from Divisional Court generally instructs the Board that the meaning of the phrase "not reasonably able to participate" should be interpreted broadly, to ensure natural justice, and where a party shows a genuine intent to participate in a hearing but was prevented from doing so, they should be entitled to a hearing through the review process. A party's genuine intent to participate must be borne out by the evidence which clearly demonstrates the party's intent to participate in the hearing.
38. In *Kathryn King-Winton v. Doverhold Investments* 2008 CANLII 60708 (ON SCDC), the Divisional Court stated: "Being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less.
39. When I consider the evidence, most notably the actions of the Tenant, I do not find that the Tenant demonstrated a genuine intention to participate in the L1 proceedings. There was no evidence from the Tenant to show he proactively did anything to try to participate in the proceedings.
40. The Tenant seemed to expect that it would be enough to simply show he was out of country at the time the Notice of Hearing was mailed, or that he didn't use his mailbox, or that the mailbox had problems with it. Although all these things may have occurred, the fact that the Tenant did not actually read or receive his mail is not the end of the analysis. To determine whether I find on a balance of probabilities that the Tenant had a genuine intention to participate and did not have a reasonable opportunity to do so, I must also consider what the Tenant did or did not do in the circumstances.
41. According to the Tenant, even though he had problems with his mailbox since the start of the tenancy, he told nobody about it. Even though he used his sister's address for mail, he told nobody about that. Even though the Tenant knew rent was in arrears since he admitted to deliberately withholding rent from his Landlord, he felt "blind sided" when, according to him, he first received notice about an eviction after he returned to Canada in September, 2022.

42. The Tenant knew or ought to have known about unpaid rent accumulating for over a year (rent arrears claimed in the N4 Notice of Termination since March, 2021), and that the Landlord may try to enforce their rights at the Board. The Tenant should have known that the Landlord or Board may send important documents such as a Notice of Termination or a Notice of Hearing to him.
43. Although the Tenant claimed he did not get any notice (such as the N4) or the L1 Notice of Hearing, the Board's file, the Landlord's evidence, and the L1 order all show that such notices were served on the Tenant to his rental unit.
44. Rather than showing a genuine intention to participate, to the contrary, I find that the Tenant's actions show no intention whatsoever to deal with the rent arrears, his tenancy issues, or engage with the Landlord. Tenant did not provide any evidence that he tried to deal with his tenancy issues until after the L1 order had been issued. His evidence was that only after he returned to Canada when he was "blind sided" did he first try to negotiate with the Landlord.
45. The Tenant simply left the country for extended periods of time, left mailbox problems unattended, and did not tell anyone how to reach him at any different address or through mail forwarding. All while rent arrears were deliberately being withheld for over a year by the time the L1 hearing was held. These actions by the Tenant show a lack of due diligence and personal responsibility.
46. On a balance of probabilities, I am not satisfied that the Tenant was not reasonably able to participate in the L1 hearing held on June 21, 2022. I find that based on the testimony and evidence, it is more likely than not, that the Tenant failed to exercise due diligence with respect to the Landlord's application and the Board's proceedings.
47. A lack of due diligence is not grounds to grant a request for review. This has been confirmed by the Courts in *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 CanLII (Div. Ct.) paragraph 8 which states:

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.
48. Since the Tenant has not proven on a balance of probabilities that he was not reasonably able to participate in the L1 proceedings, the request for review is denied.

**It is ordered that:**

49. The request to review order LTB-L-000955-21 issued on September 21, 2022, is denied. The order is confirmed and remains unchanged.



50. The interim order LTB-L-000955-21\_RV\_IN issued on October 25, 2022 is cancelled.

**December 14, 2022**  
**Date Issued**

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Michelle Tan  
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.