



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

**Citation:** Jamasi v Ramirez, 2022 ONLTB 12981

**Date:** 2022-11-22

**File Number:** LTB-L-015609-22-RV

**In the matter of:** 29 CASELY AVE  
RICHMOND HILL ON L4S0K3

**Between:** Zohra Jamasi Landlord

**And**

Edwin Ramirez, Margarita Ramirez Tenants

### Review Order

Zohra Jamasi (the 'Landlord') applied for an order to terminate the tenancy and evict Edwin Ramirez and Margarita Ramirez (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-015609-22, issued on November 10, 2022.

On November 20, 2022, the Tenants 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 that there is a serious error in the order or that a serious error occurred in the proceedings.
2. The Tenant submits that the order contains a serious error, because it does not discuss the Tenants' children.
3. A Board order is not required to identify all the evidence a party introduced at a hearing. In *R. v. R.E.M.*, 2008 SCC 51, the Supreme Court of Canada affirmed, at paragraph 17, that an order will contain sufficient reasons "if the reasons, read in context, show why the judge decided as he or she did".
4. In this present case, the November 10, 2022 order shows that the presiding adjudicator considered the parties' evidence of their circumstances. The adjudicator, for example, considered the Tenants' evidence of their total household income and considered their proposal to pay the amount they owe to the Landlord in monthly installments. The adjudicator noted that it would take six years under the Tenants' plan to pay the full amount. The adjudicator also noted that the Tenants had not made a payment to the

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Landlord since September 2021, despite having received some income. As a result, the Landlord was experiencing financial hardship.

5. Although the order does not mention the Tenants' children, it gives sufficient details to understand why the presiding adjudicator concluded to terminate the tenancy and order the Tenants to pay \$34,565.58 in rent arrears for the period ending September 27, 2022. For example, at paragraph 16 of the adjudicator's determinations, the adjudicator finds that the Tenants' repayment proposal is not reasonable. The adjudicator finds that the Tenants' evidence of their household income is inconsistent with their request to pay \$500.00 a month toward the amount they owe. The order therefore explains that the presiding adjudicator found that the tenancy could not continue, given the amount of rent arrears owing and the Tenants' unreliable evidence of their ability to comply with a reasonable repayment plan. Omitting to discuss the Tenants' children therefore does not represent a serious, reviewable error.
6. I also find that omitting to mention subsection 83(6) of the *Residential Tenancies Act, 2006* (the 'Act') in the November 10, 2022 order does not represent a serious, reviewable error.
7. The hearing recording shows that the presiding adjudicator admitted the parties' conflicting evidence of the Landlord's attempts to negotiate a settlement of the Tenants' rent arrears. At the hearing, the Landlord testified that she sent the Tenants text messages and tried to telephone them to discuss settling the amount owing. The Tenant Edwin Ramirez, by contrast, denied that the Landlord sent text messages or tried to telephone the Tenants to discuss a repayment plan. Mr. Ramirez agreed that the parties had not communicated with each other since the application was filed with the Board on April 13, 2022.
8. Mr. Ramirez testified under cross-examination, and repeated in his closing submission, that the Tenants have been unable to pay any amount to the Landlord since at least September 1, 2021. The Tenants described financial problems with trouble paying rent beginning in September 2021 when their social assistance payments were suspended. Although the Tenants gave evidence of their belief that their October 2022 appeal to the Social Benefits Tribunal will be granted, there was no evidence to determine the reliability of the Tenants' belief. Furthermore, the Tenants agreed that, even if successful in their appeal, they are not entitled to receive retroactive social assistance benefits.
9. Despite the heading that appears in the English-language version of the Act, the active text of subsection 83(6) does not require the Board to deny a landlord's application to evict a tenant for rent arrears, if the landlord does not prove that they tried to negotiate a settlement of the arrears with the tenant. Instead, the subsection reads: "in determining whether to exercise its powers under subsection [83(1)] the Board shall consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears."
10. In this case, the Tenants' evidence shows that they have not been able to make payments to the Landlord since September 2021. A negotiated settlement of their rent arrears was therefore not possible. Making findings under subsection 83(6) would not have influenced the adjudicator's general findings, that the Tenants' rent arrears will exceed the Board's \$35,000.00 monetary jurisdiction if they are evicted, and that the Tenants' request for conditional relief from eviction (the proposed payment plan) was not reasonable after considering the Tenants' evidence of their monthly income and expenses. Omitting to include a discussion of subsection 83(6) of the Act therefore did not result in a serious, reviewable error.

11. The Tenants disagree with the presiding adjudicator's decision to deny relief from eviction under section 83 of the Act.
12. The hearing recording and Board application record confirm that there was an evidentiary basis for the adjudicator to conclude that, if evicted, the Tenants' rent arrears will exceed the Board's monetary jurisdiction. There was also evidence to conclude that the Tenants' proposed payment plan was not practicable. Since there was sufficient evidence to support the adjudicator's findings of fact, I find that those findings are entitled to deference.
13. The presiding adjudicator's decision not to grant relief from eviction was therefore not capricious, because the decision was based on the adjudicator's findings of fact. Although another Board adjudicator may have exercised their discretion differently, the adjudicator's exercise is rational and is therefore entitled to deference.
14. The Tenant submits that the presiding adjudicator erred by giving the Tenant the opportunity to preserve the tenancy by paying to the Landlord an amount that exceeds the Board's \$35,000.00 monetary jurisdiction. At the hearing, Mr. Ramirez submitted that the Landlord could have sought the full amount of rent arrears owing by applying to the Superior Court of Justice pursuant to subsection 207(2) of the Act.
15. Paragraph 2 of the active paragraphs of the November 10, 2022 order notes that the opportunity to continue the tenancy by paying the amount required under subsection 74(4) or subsection 74(11) of the Act is optional. The adjudicator contrasts this to subsection 207(1) of the Act, which limits the amount the Board may order be paid to \$35,000.00, which is the monetary jurisdiction of the Small Claims Court. The adjudicator's interpretation, that the optional opportunity to continue a tenancy under section 74 of the Act is not an "order" for the purpose of subsection 207(1) of the Act, is reasonable: a tenant is not required to preserve a tenancy under subsections 74(4) or 74(11) of the Act. In the absence of binding case law that the adjudicator's interpretation is incorrect, the Tenants have not satisfied me that the adjudicator erred when she determined that the Tenants could continue the tenancy by paying \$43,686.00 to the Landlord.
16. The Tenants have therefore not demonstrated that a serious error exists in the November 10, 2022 order, or that a serious error occurred in the proceeding. The request to review the order will accordingly be denied.

**It is ordered that:**

1. The request to review order LTB-L-015609-22, issued on November 10, 2022, is denied. The order is confirmed and remains unchanged.

**November 24, 2022**

**Date Issued**

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Harry Cho

Member, Landlord and Tenant Board

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