



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

**Citation:** Kitchener Housing v Mikhael, 2022 ONLTB 11854

**Date:** 2022-11-10

**File Number:** LTB-L-004660-22-RV

**In the matter of:** 018, 103 GAGE AVE  
KITCHENER ON N2G4W2

**Between:** Kitchener Housing Landlord

**And**

Salim Kerio, Tirezza Mikhael Tenants

### Review Order

On November 4, 2022, Kitchener Housing (the ‘Landlord’) requested that Board order LTB-L-004600-22, issued on October 7, 2022, be reviewed.

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

#### Determinations:

1. I have listened to the August 2, 2022 hearing recording. 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 hearing recording shows that the Landlord’s agent Patrick Pinteau requested an order for the payment of rental arrears at a hearing time index of approximately 1:54:12. When the presiding adjudicator asked what order the Landlord sought, the Landlord’s agent identified the amount of rent arrears for the period ending August 31, 2022, without requesting an eviction order. When directly questioned whether the Landlord sought an arrears-only order, the Landlord’s agent replied in the affirmative. He confirmed his reply at 1:57:30 of the recording by repeating that the Landlord wanted an order only for the payment of rent arrears for the period ending August 31, 2022.
3. In the review request, the Landlord’s agent submits that he mistakenly requested an order for rent arrears only, because of confusion and stress during the Board hearing. The Landlord seeks a new hearing to obtain an order terminating the tenancy for non-payment of rent.
4. 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 participating in the hearing (by reason of factors

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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.”

5. The August 2, 2022 hearing recording reveals that the Landlord’s agent did not request an adjournment of the hearing for any reason. The recording also shows that the agent was able to participate fully in the hearing by introducing evidence and responding to the presiding adjudicator’s questions. Nothing in the Landlord’s agent’s behaviour, or in the hearing recording, may reasonably form the basis of an objective finding that the Landlord’s agent was incapable when he twice confirmed with the presiding adjudicator his request for an arrears-only order.
6. Based on the August 2, 2022 hearing recording, and the Divisional Court’s decision in *Lacroix v. Central-McKinlay International Ltd.*, I conclude that the Landlord has not demonstrated that a serious error exists in the October 7, 2022 order, or that a serious error occurred at the hearing. The order accurately reflects what the Landlord’s agent requested at the hearing, and the hearing recording does not give rise to a reasonable belief that the Landlord’s agent was incapacitated, or otherwise confused or mistaken. The Landlord’s agent confirmed with the presiding adjudicator on two occasions that the Landlord wanted an order for the payment of rent arrears for the period ending August 31, 2022.
7. Since the Landlord did not demonstrate that a serious error exists in the October 7, 2022 order, or that a serious error occurred at the August 2, 2022 hearing, the request to review the order must be denied.

**It is ordered that:**

1. The request to review order LTB-L-004660-22, issued on October 7, 2022, is denied. The order is confirmed and remains unchanged.

**November 10, 2022**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Harry Cho

Member, Landlord and Tenant Board

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