



JAN 31, 2025

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

Citation: Cho v Hou, 2025 ONLTB 6142

Date: 2025-01-31

File Number: LTB-L-063320-23-RV

In the matter of: BASEMENT, 105 SEAGRAVE CRES
SCARBOROUGH ON M1W3H6

Between: Chang Toa Cho Landlord

And

Tian He Hou Tenant

Review Order

Chang Toa Cho (the 'Landlord') applied for an order to terminate the tenancy and evict Tian He Hou (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-063320-23 issued on November 28, 2024.

On December 20, 2024, the Tenant requested a review of the order.

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

Determinations:

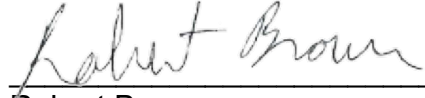
1. The Tenant alleges that the order contains serious errors regarding the hearing member's interpretation of section 83(3) of the *Residential Tenancies Act, 2006* (the 'Act'), and alleges that the hearing member erred in determining good faith.
2. The Tenant's request to review alleges that the hearing member failed to consider section 83(3) of the *Residential Tenancies Act, 2006* (the 'Act') and deny the Landlord's application based on the Landlord's failure to repair and maintain the rental unit.
3. Pursuant to section 83(3)(a) of the Act, the Board shall refuse to grant an application where a landlord **is in serious** breach of their responsibilities. (emphasis added)

4. In paragraph 57 of the “Determinations”, the Board addressed most of the maintenance issues, and by the Tenant’s own submissions, other than a noisy exhaust fan, there were no outstanding maintenance issues as of the date of the hearing. The Tenant’s review request does not refute that claim, however, believes that the hearing member should have denied the Landlord’s application because the Landlord did not resolve the issue until other governing bodies, such as the ESA, became involved.
5. For section 83(3)(a) to be engaged to deny an eviction, the serious breaches must be continuing as of the hearing date, hence the present tense used in the Act: “is in serious breach”, not “was in serious breach”. Furthermore, this interpretation of section 83(3)(a) of the Act is supported by *MacNeil v. 97445 Ontario Ltd.*, [2005] O.J. No. 6362.
6. Based on the above, I am satisfied that the hearing member applied the law correctly in determining that there was no reason to engage section 83(3)(a) of the Act.
7. The Tenant also alleges that the hearing member seriously erred because the Tenant believes that the use of the rental unit for “tai chi” is not residential use.
8. The order draws attention to the Landlord’s intended residential use of the rental unit in paragraph 22, which states that the use of exercise or dance space in the basement is part of a hobby and was not commercial. By including this fact, the hearing member has clearly shown that they put their mind to this issue when making their determination.
9. The order also shows that there was sufficient evidence for the Member to find, on a balance of probabilities, that the Landlord in good faith requires the rental unit for residential use. Since the Member’s finding is supported by evidence introduced at the hearing, the finding is rational. Although the Tenant disagrees with the finding, the Board’s review process is not an opportunity for person to relitigate an application. As the person best positioned to consider the parties’ relevant evidence and submissions, the Member’s rational finding is entitled to deference.
10. I am satisfied that both parties were aware of the purpose of the application, and that both parties had sufficient opportunity to present evidence, as well as to test the opposing side’s evidence through cross-examination. The hearing member went so far as to present evidence and cross-examination in their own sections in the order.
11. Based on this analysis, I am satisfied that the hearing was conducted in a procedurally fair manner: no error occurred in the proceeding. The Tenant’s review submissions about language interpretation during the hearing, whether a Certificate of Service was filed with the Board, and whether the Landlord’s spouse testified, are accordingly not grounds to review the November 28, 2024, order or to re-hear the application.
12. Since the Tenant did not demonstrate that an error exists in the November 28, 2024, order, or that an error occurred in the proceeding, the request to review the order must be denied.

It is ordered that:

1. The request to review order LTB-L-063320-23 issued on November 28, 2024, is denied. The order is confirmed and remains unchanged.

January 31, 2025
Date Issued



Robert Brown
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.