



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

**Citation:** Mirdha v Wilkins, 2025 ONLTB 2544

**Date:** 2025-01-10

**File Number:** LTB-L-100609-23-RV

**In the matter of:** 203 Edwardson Rd RR 1  
Grafton ON K0K2G0

**Between:** Kawsar Mirdha  
Mariam Akter

**and**

Amanda Wilkins  
Travis Budd

I hereby certify this is a  
true copy of an Order dated

**Jan 10, 2025**

Landlord and Tenant Board

Landlords

Tenants

### Review Order

Kawsar Mirdha and Mariam Akter (the 'Landlords') applied for an order to terminate the tenancy and evict Amanda Wilkins and Travis Budd (the 'Tenants') because:

- the Tenants did not pay the rent the Tenants owe. **(L1 Application)**
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another Tenants. **(L2 Application)**

This application was resolved by order LTB-L-100609-23 issued on September 6, 2024. Only the Landlord, Kawsar Mirdha, and the Landlords' Legal Representative, Reginald Bent, attended the hearing.

On September 16, 2024, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On September 17, 2024, interim order LTB-L-100609-23-RV-IN was issued, staying the order issued on September 6, 2024.

This review request was heard by videoconference on December 9, 2024.

The Landlords' Legal Representative, Reginald Bent, the Landlord, Kawsar Mirdha, and the Tenants attended the hearing.

**Determinations:**

1. For the reasons below, I am not satisfied that there is a serious error in the order or that the Tenants were not reasonably able to participate in the proceeding. As such, the Tenants' request to review must be denied.
2. In the request, the Tenants allege that the Landlords were no longer the Landlords at the time of hearing as they bank foreclosed on the property in June 2024. The Landlords did not dispute that they have defaulted on the mortgage or that the lender has commenced foreclosure proceedings against the Landlords to collect on the mortgage.
3. Section 2 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord includes the owner of a rental unit or any person any other person who permits occupancy of a rental unit.
4. Part V of the *Mortgages Act* R.S.O. 1990, C.M.40 (the "Mortgages Act") addresses circumstances such as these where a mortgagee becomes the "mortgagee in possession" of a tenanted rental property upon a default by the mortgagee. Subsection 47(1) of the *Mortgages Act* states that a person who becomes the mortgagee in possession of a mortgaged residential complex which is the subject of a tenancy agreement between the mortgagor and a tenant is deemed to be the landlord under the tenancy agreement.
5. A mortgagee is deemed to be in possession of a property when it assumes control and management of the mortgaged property or when it deprives the mortgagor of control and management of the mortgaged property (see: *Green v. National Trust* (2003), 11 RPR (4th) 108 (Ont SCJ), aff'd [2005] OJ No. 272 (CA)). While foreclosure proceedings have commenced, the mortgagee has not foreclosed on the property and there was no evidence presented to suggest that the Landlords are not still the registered owners of the property. Additionally, there was no evidence presented to suggest that the mortgagee has assumed control or management of the property, such as attorning the rent. In fact, AW asked the mortgagee about who to pay rent to and they advised her that they were unsure and did not attempt to collect any rent payments from the Tenants.
6. I find that there is insufficient evidence to demonstrate that the mortgagee has assumed control and management of the property or otherwise deprived the mortgagor of control and management of the mortgaged property. Therefore, I find, on a balance of probabilities, that the mortgagee is not in possession of the property and the Landlords are the owners and therefore a landlord as defined under section 2 of the Act. As such, I am not satisfied that the order contains a serious error in this regard.
7. In the request, the Tenants also allege that they were not reasonably able to participate in the proceedings. The Tenant, Amanda Wilkins ('AW'), testified that she was unable to attend the hearing as she had difficulties accessing the portal on the date of the hearing, which resulted in a mental breakdown that prevented her attendance. The Tenants did not submit any evidence of AW's health issues or any medical evidence to demonstrate that she was not able to attend that date due to medical issues.
8. Even if I accept that AW personally could not attend the hearing due to her mental health, the Tenants provided no reasonable explanation as to why someone else could not have attended on their behalf to request an adjournment or that the second-named Tenant was

not reasonably able to participate in the hearing. AW testified that he was needed at work and would not have been able to attend the hearing but did not submit any evidence to support his assertion that he was unable to take time off or that he works in an area without internet or cell phone reception to enable him to call into the hearing.

9. Based on the evidence before the Board, I find that the Tenants had a reasonable opportunity to participate, but failed to exercise due diligence or chose not to attend (*Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 CanLII (Div. Ct.)).

10. In *Berezovs'ka*, at para. 8, the Court noted that:

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.

11. Based on the above, I do not find that the Tenants exercised due diligence to ensure their participation in the proceeding.

12. As I am not satisfied that the Tenants were not reasonably able to participate in the proceedings or that there is a serious error in the order, the request for review must be denied.

13. The Tenants requested that the lifting of the stay be delayed as they have been unable to find new accommodations and she has mental health issues and several service animals at the property. The Landlords opposed the request as the arrears are substantial and already exceed the Board's monetary jurisdiction.

14. Given the substantial arrears and the fact that the arrears are likely to continue to accrue until the Tenants vacate the unit, I find that delaying the eviction would be unreasonable and prejudicial to the Landlords who are already facing foreclosure due to non-payment of the mortgage. As a result, the stay will be lifted immediately.

**It is ordered that:**

1. The request to review order LTB-L-100609-23, issued on September 6, 2024, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on September 17, 2024 is cancelled. The stay of order LTB-L-100609-23 is lifted immediately.

**January 10, 2025**  
**Date Issued**



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Candace Aboussafy  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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