



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

Citation: Capizzano v Neal, 2026 ONLTB 1589

Date: 2026-01-07

File Number: LTB-L-067426-25-RV

In the matter of: 319 RYDING AVE
TORONTO ON M6N1H6

Between: Angelina Capizzano Landlord

And

Mark Neal Tenant

Review Order

Angelina Capizzano (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Neal (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-067426-25, issued on November 19, 2025.

On December 4, 2025, the Tenant requested a review of the order.

On December 9, 2025, interim order LTB-L-067426-25-RV-IN was issued, staying the order issued on November 19, 2025.

The review was heard by videoconference on December 23, 2025.

The Landlord's representative Elio Capizzano and the Tenant's representative George Lagos attended the hearing.

Reasons:

1. This was an application about rent arrears. The Landlord applied to terminate the tenancy on the basis that the Tenant had not been paying the rent of \$2,000.00 monthly. The Tenant agreed that the rent had originally been \$2,000.00, but argued that in 2024 it was reduced to a lower amount, for two reasons. First, he argued that the Landlord had agreed to a new tenancy at a much lower rent. In the alternative, he argued that the Landlord had a duty under the *Human Rights Code* to accommodate his disability-related needs by reducing the rent.
2. The Landlord and Tenant Board (LTB) issued its decision on November 19, 2025. The Member found that the Tenant had not proved that the Landlord had agreed to reduce the rent. The Member did not address the argument that the Landlord had a duty under the

Human Rights Code to reduce the rent. Finding that the rent was still \$2,000.00, the Member ordered the tenancy terminated due to arrears.

3. The Tenant requests a review. He argues that the Member erred in rejecting both his arguments. I will consider each argument in turn.

Did the Member err by finding that the Tenant had not proved that the Landlord had agreed to reduce the rent?

4. At the hearing, the Tenant argued that in February, 2024, he had entered into an agreement with the Landlord to reduce the rent. In support of that argument, he relied on alleged facts which he set out in a written submission filed with the LTB. In oral argument at the hearing, his representative also read from the written submission.
5. The facts alleged in the relevant part of the Tenant's submission, which he argues gave rise to an implied agreement to reduce the rent, were as follows:

Towards the end of February [2024], Elio Capizzano [the Landlord's representative] and Frank Neal [the Tenant's brother] had a call to discuss the rental arrears. The call opened with Elio Capizzano asking about the Tenant's health and his progress to which Frank Neal confirmed it was not going well. He is having great difficulty finding affordable therapy. Elio Capizzano expressed the concerns of Landord and that Tenant has not paid his rent. Frank Neal explained that Tenant is effectively broke and that his mental illness is preventing him from working. He continued to inform Elio Capizzano that despite not having the means to pay rent at this time he was willing to pay the landlord's expenses to remain in the unit while he pursues treatment and Tenant did not want Landlord to pay his bills. Elio Capizzano told Frank Neal that some of the expenses are bundled into the rent but the gas bill is not. At that point Elio Capizzano told Frank Neal that he would be sending him the amounts from the bills and Frank Neal would eTransfer the funds.

6. The Tenant argued that Mr. Neal's proposal constituted an offer to agree to change the terms of the tenancy, or to end the tenancy and enter into a new one on new terms. Under the new terms, the rent would no longer be \$2,000.00, and would instead consist only of payment of the utility bills.
7. Mr. Capizzano did not explicitly accept the offer, but the Tenant argued that he impliedly accepted the offer by saying that he would send the bills, and by subsequently sending some of the bills to the Tenant.
8. The Landlord argued that Mr. Capizzano had not agreed to change the terms of the tenancy, and that the rent was still \$2,000.00.
9. Based on the parties' submissions, the Member made the following finding:

I cannot find any meeting of the minds or any implied agreement concerning waiver of rent. The Tenant claimed the agreement existed and the evidentiary onus is on the Tenant to prove that there was an agreement. I could not find one party's claim to be more credible than the other. Therefore, I am unable to grant the Tenant's

claim and accept the Landlord's evidence respecting the arrears owing by the Tenants.

10. I agree with the Tenant that the Member erred in his decision. I have listened to the hearing recording. The Member did not give the parties any opportunity to adduce evidence about the phone call between Mr. Neal and Mr. Capizzano. Mr. Neal did not attend the hearing. Mr. Capizzano represented the Landlord at the hearing, and made submissions about the phone call, but did not give testimony as to his recollection of what was said. The Member decided the case after hearing the parties' submissions, without hearing any evidence.
11. Not having heard evidence, it was an error for the Member to weigh the parties' credibility and to find that the Tenant had not met his evidentiary onus. If the Member needed to make findings of fact regarding what was said in the phone call, he should have given the parties the opportunity to adduce testimony from Mr. Neal and Mr. Capizzano. He could then have assessed the witnesses' credibility, and made a decision as to whether the Tenant had proved his version of the facts.
12. However, I do not find that the error was a serious error, because the Member did not actually need to assess the parties' credibility or make findings of fact. The Tenant's argument could not have succeeded, even if he had proved his version of the facts.
13. Based on the Tenant's version of the facts set out in his submissions, quoted above, Mr. Neal did not offer to change the terms of the tenancy agreement. He said that the Tenant could not pay the rent "at this time" but would pay the utility bills "while he pursues treatment." This was clearly not an offer to permanently reduce the rent. It was an offer that the Tenant would pay a lower amount until he was able to pay the full rent again.
14. A reasonable person could not have taken Mr. Neal's proposal to mean that the rent would be permanently reduced. That interpretation would be entirely inconsistent with the statements that the Tenant alleges Mr. Neal made to Mr. Capizzano.
15. Likewise, a reasonable person could not have taken Mr. Capizzano's acceptance of partial payment as an implied agreement to reduce the rent. The Landlord was entitled to accept partial payment, which was certainly preferable to no payment at all. Mr. Neal said that the Tenant would make payments if Mr. Capizzano provided the utility bills. It was natural for Mr. Capizzano to provide the bills as requested, so that the Tenant would make the payments. By doing so, Mr. Capizzano did not imply that the Tenant would no longer owe the balance of the rent.
16. For those reasons, in my view the Member did not seriously err by finding that the parties had not impliedly agreed to reduce the rent. Although the Member erred by finding that the Tenant had failed to prove his version of the facts, he would have reached the same conclusion if he had accepted the Tenant's version of the facts.
17. I would also note that, to the extent that Mr. Capizzano may have agreed to temporarily waive part of the rent, that agreement was void. The *Residential Tenancies Act, 2006* (RTA) entitles a landlord to be paid the full rent. The RTA applies despite any agreement or waiver to the contrary (s.3(1)). Even if the Landlord agreed not to pursue the full rent in February, 2024, she can still pursue it in this proceeding.

Did the Member err by not finding that the Landlord had a duty to accommodate the Tenant by reducing the rent?

18. In the alternative, the Tenant argued that even if the Landlord had not agreed to reduce the rent, she was required to agree as an accommodation of his disability. He said that the reason he could not pay the full rent was that his disability prevented him from working. His only income was Ontario Works (OW) benefits, which were not sufficient to pay the rent. He hoped to qualify for Ontario Disability Support Program (ODSP) benefits, which would be higher than OW benefits but still not sufficient to pay the rent.
19. The Tenant argued that, because his inability to pay the full rent was due to a disability, the Landlord had a duty under the *Human Rights Code* to accommodate him by reducing the rent, as long as doing so would not cause her undue hardship.
20. The Member did not address the Tenant's argument in his decision. I agree with the Tenant that this was an error. The argument was one of the central issues in the case. The Member should have considered the argument, made a decision, and given reasons.
21. However, in this case I do not find that the error was a serious error. I say that because, in my view, the Tenant's argument could not have succeeded even if the Member had considered it. There are two reasons that the argument could not have succeeded.
22. First, the Tenant's inability to pay the rent was not caused by his disability. It was caused by his low income. One of the reasons for his low income may have been that he was unable to work due to a disability, but the causal link between the disability and the rent arrears was indirect at best. The Divisional Court has suggested that the duty to accommodate only arises where the behaviour leading to eviction was directly caused by a tenant's disability (*Connelly v. Mary Lambert Swale Non-Profit Homes*, 2007 CanLII 52787 (ON SCDC) at para. 8; LTB Interpretation Guideline 17).
23. Second, even if the Tenant's disability had directly caused him to be unable to pay the rent, the Landlord would not have been required to accommodate him by reducing the rent.
24. Section 17(1) of the *Human Rights Code* provides that a person's human rights are not infringed if, because of disability, the person is incapable of performing or fulfilling the essential duties or requirements attending the exercise of the right. The purpose of accommodation is to meet a person's disability-related needs to enable them to fulfill their essential duties, not to relieve them of the obligation to fulfill their essential duties.
25. In the employment context, the Supreme Court of Canada has held that:

[...] the purpose of the duty to accommodate is not to completely alter the essence of the contract of employment, that is, the employee's duty to perform work in exchange for remuneration. [...] The employer does not have a duty to change working conditions in a fundamental way, but does have a duty, if it can do so without undue hardship, to arrange the employee's workplace or duties to enable the employee to do his or her work. (*Hydro-Québec v. Syndicat des employé-e-s de techniques professionnelles et de bureau d'Hydro-Québec, section locale 2000 (SCFP-FTQ)*, 2008 SCC 43 (CanLII), [2008] 2 SCR 561 at paras. 15 & 16).

26. The same reasoning applies in the housing context. A tenancy agreement is an agreement that a tenant will pay rent in exchange for the right to occupy a rental unit. The Tenant's essential duty is to pay the rent, just as the Landlord's essential duty is to provide the rental unit to the Tenant. If the Landlord could provide an accommodation which would enable to the Tenant to pay the rent, she would be required to do so to the point of undue hardship. However, she is not required to continue the tenancy if the Tenant is incapable of paying the rent, any more than an employer is required to continue to employ an employee who is incapable of doing his or her work.
27. In short, the Tenant did not ask to be accommodated to enable him to fulfill his duty to pay the lawful rent. Rather, he asked that his duty to pay the lawful rent be waived. The *Human Rights Code* does not require the Landlord to agree to that request.
28. For those reasons, in my view the Member did not seriously err by declining to give effect to the Tenant's accommodation argument, although he ought to have given reasons for that decision.

Conclusion

29. The Tenant made two arguments in this proceeding. The Member erred in respect of both arguments. He erred in deciding the first argument by weighing the parties' credibility, even though no evidence had been adduced. He erred in respect of the second argument by not deciding it at all.
30. However, for the reasons set out above, in my view if the Member had decided the issues correctly, the result would have been the same. The Tenant's arguments could not have succeeded. In the circumstances, sending the matter to a new hearing would serve no purpose, and would only delay the eviction order to which the Landlord is clearly entitled in this case.
31. I therefore find that the errors in the decision were not serious errors within the meaning of the LTB's Rules. The Member reached the correct and inevitable result. The review will be denied.

It is ordered that:

1. The request to review order LTB-L-067426-25, issued on November 19, 2025, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on December 9, 2025 is cancelled. The stay of order LTB-L-067426-25 is lifted immediately.

January 7, 2026
Date Issued

Dale Whitmore
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.