



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

Citation: Pena v Wheatle, 2026 ONLTB 7116

Date: 2026-01-22

File Number: LTB-L-023949-24 and LTB-T-057087-24-RV

In the matter of: 1027, 8119 Birchmount Rd
Unionville ON L6G0H5

Between: Micah Pena Landlord

And

Jahnae Wheatle Tenant

Review Order

Micah Pena (the 'Landlord') applied for an order requiring Jahnae Wheatle (the 'Tenant') to pay the rent that the Tenant owes (L9 Application).

The Tenant applied for an order determining that the Landlord entered the rental unit illegally and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (T2 Application).

The applications were heard on September 23, 2025 and resolved by order LTB-L-023949-24 and LTB-T-057087-24 issued on September 26, 2025. Only the Landlord attended the hearing.

On September 26, 2025, the Tenant requested that order LTB-L-023949-24 and LTB-T-057087-24 issued on September 26, 2025 be reviewed and that the order be stayed until the Tenant's request to review the order is resolved.

On October 2, 2025, interim order LTB-L-023949-24 and LTB-T-057087-24-RV-IN was issued staying the order issued on September 26, 2025.

The review was heard by videoconference on October 21, 2025 and was granted by way of a second interim review order dated November 13, 2025. The matters were ordered to be heard de novo.

These applications were heard de novo by videoconference on December 2, 2025.

The Landlord and the Tenant attended the hearing.

At the onset of the hearing, the Landlord requested an adjournment so that they could have time to prepare and because they had a business commitment they had to tend to until 3:00pm. On this basis the adjournment request to have the matter heard later in the day was granted.

Determinations:

L10 application

1. The parties consented to include the Landlord's L10 application under LTB-L-025832-24 that is scheduled to be heard by videoconference on January 20, 2026 on the basis that the Landlord requested to withdraw the application. I see no reason to deny the Landlord's request and the file is withdrawn.

L9 Application

2. The parties were in a one-year fixed term lease commencing on February 1, 2024 and ending January 31, 2025.
3. The Tenant vacated the rental unit on April 1, 2024 and the Tenant was in possession of the rental unit on the date the application was filed on March 22, 2024.
4. The lawful rent is \$2,750.00. It is due on the 1st day of each month.
5. Based on a monthly rent of \$2,750.00 the daily compensation amount is \$90.41. (\$2,750.00x12 and divided by 365)
6. The Tenant has not made any payments since the application was filed.
7. The Landlord collected a rent deposit of \$2,750.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated on May 9, 2024.
8. Interest on the rent deposit, in the amount of \$18.65 is owing to the Tenant for the period from February 1, 2024 to May 9, 2024.
9. On February 16, 2024, the Tenant gave notice to the Landlord that was not in accordance with section 47 of the *Residential Tenancies Act, 2006* (the 'Act'). There was no agreement to terminate the tenancy. The Tenant vacated only three months into their twelve-month contract with the Landlord.
10. Pursuant to subsection 88(1) of the Act, if a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:
 1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
11. The Landlord was able to mitigate their losses pursuant to section 16 of the Act and they re-rented the unit for May 10, 2024. They listed the unit for rent through an agent after the

Tenant vacated the rental unit and incurred costs in addition to the amount the Tenant did not pay.

12. The Tenant did not pay the rent for the period of March 1, 2024 to May 9, 2024.
13. The Total amount of rent owing by the Tenant to the Landlord for the period ending May 9, 2024 is calculated as **\$3,545.04**. This amount includes rent arrears owing up to May 9, 2024, minus the rent deposit and interest owing.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

T2 Application

15. On July 16, 2024 the Tenant filed their T2 application alleging that the Landlord or their agent substantially interfered with their reasonable enjoyment of the rental unit on the basis that the Landlord's agent, attended the rental unit on February 15, 2024 and entered the rental unit after hours without proper notice and without consent. Additionally, the Tenant alleged that the Landlord's agent attended the unit on February 21, 2024 and used their key to the unit without giving proper notice and without consent from the Tenant.
16. The Tenant also alleged that she was being racially profiled when she attempted to move into the unit on or about February 1, 2024 when she was not given an elevator to move items into the unit and not allowed to move in large furniture items, despite other people moving in with different ethnicities and moving large belongings in the elevator. She felt targeted by security personnel at the condominium complex because they followed her and refused to allow her to move large furniture items. She alleged this made her feel unsafe and uncomfortable in the building because the Landlord's agent also refused to speak to them on this date.
17. In remedy, the Tenant seeks to have the tenancy terminated on the date she vacated the unit on April 1, 2024 and to offset any further arrears from her claims alleged in her T2 application.
18. The Landlord disputes the allegations and insists the Tenant should be responsible for the rent payments up to the date she was able to mitigate her losses and have the unit re-rented for May 10, 2024. She does not agree to any set-off.
19. The Tenant testified that on February 10, 2024 they noticed that the dishwasher was not working and they relied on the dishwasher because they have a severe allergy to detergent getting on their hands. The Tenant notified the Landlord about the dishwasher in the early afternoon on February 15, 2024. The Landlord immediately responded and said they would send someone that same day.
20. Shortly after 8:00pm on February 15th the Tenant left the unit with their small child to go and get groceries and run errands since the repair person had not yet come and it was after working hours. When they arrived back at the unit at approximately 10:00pm, there was a yellow sticky note posted on the laundry room door inside their suite that said "Machines are hooked up and on power. What's wrong?"

21. The Tenant was aghast to find that someone had entered her unit after hours by using a key and without the Tenant's consent at the time of entry. She was also disturbed that it appeared they checked her washing machine and not the dishwasher which she had complained of. She testified that this entry had a negative impact on her mental health and she felt unsafe for her and her daughter and no longer felt comfortable living in the unit.
22. The Tenant testified that it was a culmination of issues over the two-week period she had been occupying the unit. Starting with the security incident and move in on February 1st to her lack of a storage locker until February 7th and then the entry on the 15th was the final straw which made her feel unsafe.
23. The day after this incident, the Tenant told the Landlord that they would be moving out by the end of March 2024. I accept that she gave the Landlord this notice on or about February 16, 2024 in response to the entry as the Landlord's spouse inquired if they would change their mind about moving on February 16, 2024 to which the Tenant declined as she already made up her mind.
24. While I do accept that the Tenant perceived she was being targeted at the onset of the tenancy when she was moving in, I also conversely accept the Landlord's evidence that the reason the Tenant was not allowed to move in large furniture items was because she did not properly book the elevator for April 1st and not because of any racial profiling. I say this because the Tenant also failed to book the elevator for March 31, 2024 which resulted in her moving out a day later despite the Landlord's reminders in advance of the move out date. The Tenant's evidence was with respect to her perception and not any concrete evidence that she was being profiled.
25. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Where, the evidence of the opposing party is as believable as that of the party bearing the burden of proof, that burden cannot be said to have been discharged. Therefore, I do not find any remedy appropriate for this allegation of the Tenant's claim.
26. With respect to the allegation of the illegal entries, the Tenant clarified it was only the entry on February 15th that was after hours that gave rise to their claim because she did not consent at the time of the entry. Any entries after February 15th were either coordinated with the Landlord directly or with the maintenance staff and contractors.
27. While the Landlord disputes that there was an illegal entry on February 15th and suggests alternatively that the repair person must have entered the unit earlier and that perhaps the Tenant missed their entry because they were doing something else or not at the unit, I find the Tenant's evidence much more persuasive and convincing.
28. The Tenant provided compelling direct evidence that withstood scrutiny under cross examination. I accept that she left the unit after 8:00pm and came home around 10:00pm to find the notice posted on her door. Even if that is not correct, there was no evidence put forward by the Landlord that would confirm on the date in question that there was a repair person entering earlier. I do not accept a general email from the management company stating that repairs are only completed during working hours. Clearly this was not the case,

and I draw a negative inference to the Landlord not calling the repair person as a witness to clarify the time they actually entered.

29. In accordance with subsection 26(1)(b) of the Act a landlord may enter the unit at any time without written notice, if the tenant consents to the entry at the time of entry.
30. Anything less than the Tenant opening the door or acknowledging the entry of the repair person, cannot be said to be proper consent to the entry. On a balance of probabilities, I find that the Landlord, through their agent, entered the rental unit illegally on February 15, 2024 and it was also after 8:00pm. And while there was no evidence led that would suggest any malice on the part of the Landlord or the repair person, I accept that the Tenant was aghast and felt unsafe after having an unknown person enter her unit late at night in her absence.
31. In *Wrona v. Toronto Community Housing Corporation*, [2007 CanLII 3228](#), the Divisional Court granted the tenant an abatement of \$1,000.00 for a single illegal entry which was well in excess of 100% of the monthly rent charged. The issue in that case was not whether there was consent at the time of entry, but rather whether the notice was specific enough with respect to the entry time. In *Wrona*, the Court found that a 6–8-hour window of time was insufficient to put the Tenant on notice of when exactly the entry was going to take place.
32. The Divisional Court's decision is binding on the Board so it must be taken into account when the Board crafts a remedy for a similar breach to the one that existed in that case. However, in *Wrona*, there had been at least one previous application brought to the Board by the tenant about the same issue. In other words, there was a history of dispute between the parties about what constituted legal entry. Here there was no prior application between the parties so there was no such history.
33. The Tenant's monthly rent was \$2,750.00 and she requested a set-off relating to the amount the Landlord is seeking beyond April 1st. This would translate to an amount of 38 days at a per diem amount of \$90.41 or \$3,435.58.
34. In considering the totality of the circumstances, including the nature of the illegal entry, the impact on the Tenant and her daughter, and the distinguishable facts from the *Wrona* case, I find a set-off of half a month's rent is appropriate in the amount of \$1,375.00.
35. After this entry, there was no further illegal entries and no other instances of substantial interference. While the Tenant submits that the final straw was the illegal entry on February 15th, I do not find the other issues complained of were the fault of the Landlord. The Tenant stated they were ok with the late locker storage and the Tenant otherwise did not establish the substantial interference at the onset of the tenancy with the move in as they were responsible for not having the elevator booked. I therefore do not find that the tenancy should terminate on April 1, 2024 based on all of the evidence before me.
36. Since the Tenant did prove the illegal entry, the Tenant is entitled their application filing fee costs of \$48.00. Accordingly, the Landlord's costs of \$186.00 will be reduced to \$138.00.

It is ordered that:

1. The Landlord's L10 application under LTB-L-025832-25 is withdrawn, and the LTB's file is closed.
2. Order LTB-L-023949-24 and LTB-T-057087-24 issued on September 26, 2025 is replaced with the following order:
3. The Tenant shall pay to the Landlord \$2,308.04. This amount includes rent arrears owing up to May 9, 2024 and the balance of the cost of the application fee minus the set-off and minus the rent deposit and interest owing.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 2, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 3, 2026 at 4.00% annually on the balance outstanding.

January 22, 2026
Date Issued

Terri van Huisstede
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.