



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

Citation: MERCHANT v PEREIRA, 2026 ONLTB 3116

Date: 2026-02-05

File Number: LTB-L-047967-24-RV

In the matter of: Main Upper Unit, 1 Pewter Gate
Brampton Ontario L6X0L4

Between: Sayed Ahmed Merchant Landlords
Salma Sayed Merchant

And

Lauren Pereira Tenant

Review Order

Sayed Ahmed Merchant and Salma Sayed Merchant (the 'Landlords') applied for an order to terminate the tenancy and evict Lauren Pereira (the 'Tenant') because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

This application was resolved by order LTB-L-047967-24 issued on February 20, 2025.

On March 18, 2025, the Landlords requested a review of the order.

The review request was heard by videoconference on June 30, 2025. The review was granted. The rehearing of the Landlords' application began on June 30, 2025. The rehearing of the Landlords' application continued on September 2, 2025 and finished on December 9, 2025. There was also a hearing date scheduled for August 5, 2025, but it was adjourned. Both parties provided their final submissions in writing.

The Landlords, the Landlords' representative Sobini Tharmalingam, the Tenant, and the Tenant's representative Kush Gupta attended the hearing.

Determinations:

Review

1. For the following reasons I find that the order contains a serious error by not providing sufficient reasons.

2. The Supreme Court of Canada in *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 provides the following guidance about what constitutes sufficient reasons in administrative tribunal decisions.

“[127] The principles of justification and transparency require that an administrative decision maker’s reasons meaningfully account for the central issues and concerns raised by the parties. The principle that the individual or individuals affected by a decision should have the opportunity to present their case fully and fairly underlies the duty of procedural fairness and is rooted in the right to be heard... The concept of responsive reasons is inherently bound up with this principle, because reasons are the primary mechanism by which decision makers demonstrate that they have actually listened to the parties.

[128] Reviewing courts cannot expect administrative decision makers to “respond to every argument or line of possible analysis”..., or to “make an explicit finding on each constituent element, however subordinate, leading to its final conclusion”. To impose such expectations would have a paralyzing effect on the proper functioning of administrative bodies and would needlessly compromise important values such as efficiency and access to justice. However, a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question whether the decision maker was actually alert and sensitive to the matter before it. In addition to assuring parties that their concerns have been heard, the process of drafting reasons with care and attention can alert the decision maker to inadvertent gaps and other flaws in its reasoning...”

3. The order makes no determination regarding the central question before it regarding whether the Landlords in good faith require possession of the rental unit for residential occupation. Rather the order’s analysis entirely focusses on what constitutes the rental unit and whether the Landlords have denied the Tenant access to a portion of the rental unit. Not addressing the central question about the good faith nature of the Landlords’ intent constitutes insufficient reasons.
4. The order states that the Landlords substantially breached section 83 of *Residential Tenancies Act, 2006* (‘the Act’). Section 83 of the Act provides mandatory considerations for the Board in determining whether to grant relief from eviction. The order does not make entirely clear what it means when it says the Landlords breached section 83. What the order might mean is that the Landlords are in serious breach of their responsibilities under the Act and therefore mandatory refusal of eviction was required pursuant to section 83(3)(a) of the Act. However, if that is what the order meant, it does not make that sufficiently clear. Not making clear why an application was dismissed constitutes insufficient reasons.
5. In determining that the rental unit includes the basement of the rental property, the order does not contend with the arguments and evidence of the Landlords. At approximately 1:21:30 on the hearing recording the Landlords provide arguments for why the Board should find that the basement was never intended to be part of the rental unit. The Landlord Sayed Ahmed Merchant testified that the basement was not finished when the rental unit was rented to the Tenant, that the Tenant was only provided with one parking

spot, and that the Tenant only pays 75% of the utilities. The Landlords' argument is that not being provided with all the available parking spots and only paying a portion of the utilities supports that the rental unit was never meant to be the entire house. There is no analysis regarding the Landlords' evidence in this regard in the order. Not meaningfully engaging with the evidence of one of the parties constitutes insufficient reasons.

6. The order also did not grapple with the real substance of the transaction between the parties as required by section 202 of the Act. The Board concluded solely based on the lease agreement which does not explicitly exclude the basement, that the rental unit is the whole house. The order does not consider whether the basement being unfinished when the tenancy started, being finished later during the tenancy, and being rented to other tenants during the tenancy, might establish that the true substance of the transaction between the parties is that the rental unit never included the basement.
7. The request to review was granted and the application was reheard.

The Application

8. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated June 30, 2026.
9. The Tenant was in possession of the rental unit on the date the application was filed.
10. The Tenant testified that she received compensation, the Landlords asked for it back, but she did not return it. The Landlords have compensated the Tenant an amount equal to one month's rent by August 31, 2024.

Request to Cross Examine the Landlords' Representative

11. The Tenant's request to call the Landlords' legal representative as a witness was denied. In *Konstan v Berkovits*, 2013 ONSC 6169 (CanLII) at para. 31, the Court held that summoning counsel, "should not be done absent exceptional circumstances that relate to the materiality and necessity of the lawyer's evidence". The Landlords' representative acts at the instruction of the Landlords. Calling the Landlords' representative as a witness was unnecessary as the Tenant was not prohibited from cross examining the Landlords on any actions taken by their legal representative. Additionally, the Tenant was not prohibited from testifying about any interactions she had with the Landlords' representative that she thinks demonstrate the Landlords' bad faith intent. As such any evidence that the Tenant sought to introduce through the Landlords' legal representative could be introduced in other ways that did not involve the exceptional step of calling a legal representative as a witness.

Is the Basement Part of the Rental Unit?

12. A central dispute between the parties is whether the basement of the house rented by the Tenant constitutes part of the rental unit. The Tenant argues that determination is relevant to whether the N12 notice of termination adequately describes the rental unit and whether mandatory refusal of eviction applies because the Landlords are in serious breach of their responsibilities under the Act by denying the Tenant access to part of the rental unit.

13. During the course of these proceedings, the Board determined this issue in another file. Order LTB-L-047884-25 issued on October 14, 2025, at paragraph 22 determines that the rental unit does not include the basement of the house. I find that the doctrine of issue estoppel applies as the issue has already been decided by the Board.
14. I also note that I would have arrived at the same conclusion as order LTB-L-047884-25. That the lease agreement and other documents fail to explicitly exclude the basement as part of the rental unit does not satisfy me that the rental unit includes it. The true substance of the transaction between the parties and how the parties have treated the basement demonstrates that the basement was never part of the rental unit. During the tenancy other tenants have rented and occupied the basement. That demonstrates that the rental unit never included the basement.

The Notice of Termination

15. On May 21, 2024, the Landlords gave the Tenant an N12 notice of termination ('N12 notice'). It was deemed served on May 26, 2024. The termination date was August 31, 2024. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation for themselves.
16. Section 43(1)(a) of the Act requires that a notice of termination identify the rental unit for which the notice is given. The N12 notice of termination ('N12 notice') lists the rental unit as 1 Pewter Gate, Brampton Ontario L6X0L4. As the rental unit does not include the basement, a more accurate description on the N12 notice would have somehow indicated that the notice only refers to the upper portion of the house. The Tenant submits that the failure to include such language, renders the notice of termination invalid and that the Landlords' application should be dismissed.
17. Section 212(1) of the Act establishes that substantial compliance with the Act regarding the contents of forms, notices, or documents is sufficient. Section 212(2) of the Act establishes that an error in the contents of a form, notice, or document still constitutes substantial compliance as long as the error does not significantly prejudice a party's ability to participate in a proceeding under this Act.
18. The Tenant testified that she found the notice confusing because the Landlords keep describing the rental unit differently on different forms and applications. I do not find that the N12 notice failing to include the words "upper" impacted the Tenant's ability to participate in the proceeding. The Tenant clearly understands that the N12 notice applies to her. She has actively challenged the notice and the Landlords' application. The Tenant knows where she lives and that the Landlords are trying to evict her from the rental unit. I do not find that the N12 notice failing to include the words "upper" impacted the Tenant's ability to challenge the good faith nature of the Landlords' intent for the rental unit.
19. The Landlords' request to amend the application to include the words "main upper unit" is granted. It is practical that the application should be amended to reflect the accurate address. For the same reasons as noted above I do not find that granting the amendment prejudices the Tenant.

Abuse of Process

20. The Tenant submits that the application should be dismissed for being an abuse of process because the Landlords have filed so many applications (LTB-L-047884-25, LTB-L-097987-25, LTB-L-105548-24 and perhaps more). The Tenant highlighted that the Board previously found that the Landlords engaged in an abuse of process in order LTB-L-047884-25 issued on October 14, 2025. The Tenant testified that the numerous applications have had a tremendous impact on her financially, personally, professionally, and testified that she is having panic attacks.
21. I do not find that the numerous applications establish an abuse of process. The Landlords are exercising their legal rights to seek termination of the tenancy and the payment of rent arrears. The Board's previous finding that the Landlords engaged in an abuse of process was limited to the specific facts of that case. In that case the Landlords were proceeding with a claim for arrears only in one application, while simultaneously seeking eviction for the exact same arrears of rent in a subsequent application. Those are very different circumstances than the case before me. As explained below I find that the application before me has merit and is not frivolous.
22. The rental unit has never included the basement. I agree that the Landlords could have been more consistent and accurate in their description of the rental unit, but I don't find failing to do so raises to the level of an abuse of process.

Good Faith

23. For the following reasons I find that the Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
24. The Landlord Sayed Ahmed Merchant testified that he and his wife want to move into the rental unit. The Landlord testified that he currently lives with his son, his son has children of his own who are growing, that he does not want to aggravate the family situation, and that he wants his own space. The Landlord also testified that he has a personal issue with his daughter in law and that he intends for the rental unit to be his retirement home.
25. On the last hearing date, the Landlords provided an additional reason that they want to move into the rental unit. The Landlord Sayed Ahmed Merchant testified that his wife had a right knee procedure and that it is difficult for her to walk up the stairs to the bedroom in the house they currently live in. The Landlord testified that it takes 3-5 minutes for her to climb the stairs. The Landlord testified that his wife cannot move her bedroom downstairs as they are living in their son's house. The Landlord agreed in cross examination that when the N12 notice was served there was already a plan to replace his wife's knees but testified that he did not bring the evidence forward earlier because they did not have a date for the procedure yet.
26. I found the Landlord Sayed Ahmed Merchant to be a credible witness and accept that he wants to move into the rental unit for the reasons he provided. It did not lead me to have

concerns about the Landlord's credibility that he added another reason that he wanted to move into the rental unit on the last hearing date. It is not unbelievable that there could be multiple reasons that the Landlord wants to move into the rental unit. The proceedings were lengthy and the Landlord's explanation for not providing evidence about the knee procedure earlier because he did not have it before was reasonable. While there are stairs in the rental unit, I accept that it will be more suitable because it will be the Landlords' own private space, and they can set up their bedroom where they choose.

27. I disagree with the Tenant that the Landlord Sayed Ahmed Merchant provided conflicting evidence about his work status. While the Landlord testified both that he is retired and intends to use the basement of the property as a home office, the Landlord had a good explanation for the seeming contradiction. The Landlord testified that despite being retired he still does some work as a contractor.
28. The Tenant questioned why the Landlords would want to move from a home they are established in and have lived in for a long time. While I accept that the Landlords have lived with their son for a long time, I also accept that their son's children getting older has changed the family dynamic and that the Landlords are being truthful when they say they want to move into the rental unit.
29. The Tenant testified that she believes the Landlords want to evict her so that they can make more money. The Tenant testified that the Landlords always mention more money and raise the rent every single year. I found this argument of the Tenant to be largely speculative. While I accept that the Landlords have mentioned money before and have raised the rent that does not satisfy me that the Landlords are lying about wanting to move into the rental unit. Additionally, the Landlord Sayed Ahmed Merchant testified that he also asked the basement tenant to move out, and that after they moved out, he has not re-rented the basement unit. That the Landlords have not re-rented the basement demonstrates that the Landlords are not trying to kick out tenants so that they can re-rent at a higher price.
30. The Tenant testified that the Landlord Sayed Ahmed Merchant told her he has a property in Ajax. The Landlord testified that the rental unit is the only property he owns. I have insufficient evidence before me to find that the Landlords own more properties than they claim. Additionally, even if they do, a landlord can choose to move into a specific rental unit.
31. The Tenant submits that the Landlords failing to look for any alternative living arrangements demonstrates their bad faith. I'm not satisfied that it does. The Landlords want to move into the property they own. The Landlords are not interested in renting or buying somewhere else.
32. The Tenant raised the following issues and submitted that they demonstrate the bad faith nature of the Landlords' intent:
 - The Tenant testified that the Landlords asked for compensation to be returned.
 - The Tenant testified that the Landlords do not do maintenance. The Landlords tell the Tenant to fix maintenance issues and then deduct the costs from the rent. The Tenant mentioned maintenance issues involving mould, defective windows,

thermostat issues, a running toilet, that the Landlords do not maintain the lawn, and has not cleaned the garage or driveway.

- The Tenant testified that the Landlords tried to install locks and cameras at the rental property.
- The Tenant testified that the Landlords have made harassing comments such as asking the Tenant about why she has oxygen tanks. The Tenant testified that the Landlords made a false claim about there being an explosive substance in the rental unit.
- The Tenant testified that the Landlords sent the Tenant a text message telling her that god watches everything and that whoever is doing injustice will be punished in this world and the world after.
- The Tenant testified that the Landlords have filed numerous eviction applications.
- The Tenant testified that the Landlords' representative showed up at the rental unit, was trespassing, and screamed in the doorway.
- The Tenant testified that the Landlords won't mediate with the Tenant and have not offered her any support such as providing a real estate agent or assisting with moving costs.
- The Tenant testified that the Landlords have served notices of entry not in accordance with the Act.
- The Tenant testified that the Landlord Sayed Ahmed Merchant told the basement tenants that he was selling the home. The Tenant also said that the Landlords have threatened to sell the property 5 or 6 times.

33. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court stated the LTB can consider the conduct and the motives of a landlord in order to draw inferences as to whether a landlord desires, in good faith, to occupy the property. While I have done so, the Tenant testified that all the issues with the Landlords started after the service of the N12 notice. I'm not satisfied that issues that occurred after the service of the N12 notice establish that the Landlords are being untruthful about intending to move into the rental unit. Put differently, that the relationship between the parties has significantly deteriorated since the service of an N12 notice does not establish that the Landlords are being insincere about wanting to move into the rental unit.

34. The Court in *Feeney v. Noble*, 1994 CanLII 10538 (ON SC) established that when deciding "good faith" I must consider whether the landlord has a genuine intention to occupy the premises. Good faith relates to the sincerity, genuineness, and truthfulness of the Landlords' intention. While the Tenant could potentially have a remedy on a tenant application for some of her claims, that does not satisfy me that the Landlords do not want to move into the rental unit.

35. The only event that the Tenant claims happened prior to the service of the N12 notice of termination is the Tenant's claim that the Landlords said they want to sell the rental unit. However, I'm not satisfied on a balance of probabilities that occurred. The Landlord Sayed

Ahmed Merchant denied telling the Tenant or the basement tenants that he wants to sell the rental unit. The Tenant did not produce any supporting documentation that the Landlords made the statements, such as a recording, proof of the Landlords saying it in writing, or a real estate posting.

Serious Breach

36. Even if I accept all the Tenant's claims at their highest (outlined in paragraph 32) I am not satisfied that the Landlords are in serious breach of their responsibilities under the Act and that mandatory refusal of eviction applies in accordance with section 83(3)(a) of the Act. That section only applies to serious breaches of the Act that are ongoing at the time of the hearing. Many of the Tenant's claims are about specific events that happened and are now over. If the Tenant's maintenance claims are ongoing, I don't find they rise to the level of serious breach.

Relief From Eviction

37. After the conclusion of the hearing documents were uploaded to the portal indicating that the Tenant has given notice to end the tenancy on January 31, 2026. This evidence has not been verified through the hearing process. The Tenant has not provided testimony about it and it contradicts her previous testimony that she wanted the tenancy to continue. Only post hearing submissions, not evidence, was invited from the parties and therefore the Tenant giving notice will not be considered. However, I note that nothing in this order prevents the parties from terminating the tenancy in accordance with the Act earlier than the termination date set out in this order.

38. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 30, 2026 pursuant to subsection 83(1)(b) of the Act.

39. The Tenant has been living in the rental unit for over 10 years. The Tenant lives in the rental unit with her fiancé, five children, her elderly mother, and family pets. The Tenant testified that her mother has significant health issues, people come to the rental unit to help her with medical care, and there is a hospital close by. The Tenant testified that an eviction might result in her mother having to change doctors. The Tenant testified that she has personally been dealing with stress, anxiety, and depression. The Tenant testified that one of her children works close to the rental unit, one is in university, and the others all go to school near the rental unit. The Tenant also testified that she is part of the local community and has friends in the area.

40. The eviction will have a significant impact on the Tenant. The delay is being provided so that the Tenant has time to find new living arrangements and to make the necessary preparations regarding her families' work, schooling, and medical needs. It will also allow the Tenant's children to finish the school year in their current home.

41. While I have considered the impact of a delayed eviction on the Landlords, I do not find the delay to be unfair. The Landlords are currently housed. While one of the Landlords is experiencing mobility challenges, she is currently able to make it up the stairs to her bedroom. However, I do find that the year and a half delay requested by the Tenant would

be unfair. The Landlords' current living situation is presenting challenges for them and the Landlords have been waiting a significant time to move into the rental unit.

Costs

42. Both parties seek costs against each other. Costs, other than an application filing fee of a successful party, are not common at the Board. The Board reserves cost awards for instances where a party's conduct in the proceeding was unreasonable. While the proceedings were lengthy, I find that is because of the volume of evidence of both sides. I do not find the conduct of either side to be unreasonable such that costs should be awarded.
43. The Tenant requests that the Landlords be ordered to pay an administrative fine. That is not an available remedy to the Tenant on this type of application nor would I award it if it was. The Landlords' application has merit and there is no basis to order the Landlords to pay an administrative fine.

It is ordered that:

1. The request to review order LTB-L-047967-24 issued on February 20, 2025 is granted.
2. Order LTB-L-047967-24 issued on February 20, 2025 is canceled and replaced with the following:
3. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2026.
4. If the unit is not vacated on or before June 30, 2026, then starting July 1, 2026, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after July 1, 2026.

February 05, 2026
Date Issued

Amanda Kovats
Member, Landlords 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on January 8, 2027 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.