



AMENDED
Order under Section 16.1 of the
Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Mottley v Equity Builders Ltd, 2024 ONLTB 19882

Date: 2026-03-20

File Number: LTB-T-027947-23-AM2

In the matter of: 301B, 721 Earls court Street
Sarnia Ontario N7S1V1

Tenant

Between: Dwayne Mottley

And

Landlords

~~Equity Builders Ltd.~~
Equity Builders Inc.
E.Q.B. Ltd
721 Earls Court Inc.
Equity Builders.ca Inc
~~JOANNE SMOUT~~
~~TARANG SHAH~~
Ash Singh

AMENDED ORDER

The Divisional Court in *Equity Builders Ltd. et al. v. Landlord and Tenant Board et al.*, 2025 ONSC 759 (the ‘Equity’ decision) has referred to the LTB for a determination if Ash Singh ought to be named as a landlord. (Leave to appeal denied, July 18, 2025)

[82] The appropriate remedy for this breach of the duty of procedural fairness is to remit the matter back to the Board for a new hearing only on the narrow issue of whether Mr. Singh should be named as a landlord in the orders.

[135] The appeals and applications for judicial review are dismissed except with respect to the Board’s orders naming Mr. Singh as a landlord. That aspect of the Board’s orders is set aside, and that issue is referred back to the Board for a hearing on whether Mr. Singh ought to be named as a landlord.

The Tenants submitted a request for a clerical amendment to amend the names of the Landlords and add the correctly named corporate landlords and Ash Singh.

Equity Builders Ltd., a Saskatchewan-based corporation submitted a request for a clerical amendment to be removed as a named party.

The LTB convened a clerical amendment hearing on June 6, 2026, to determine the issues above.

Amendments are all bolded for easy reference.

Dwayne Mottley (the 'Tenant') applied for an order determining that Equity Builders Ltd. Joanne Smout, Tarang Shah, SARNIA and Ash Singh (the 'Landlords'):

- altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference over several days of hearing ending October 20, 2023. Following this, the parties provided written submissions.

The Landlord Legal Representatives Timothy Duggan and Natasha Mizzi and the Landlord Ash Singh participated in the hearings.

The Tenant's Legal Representatives Andrew Bolter and Melissa Bradley and the Tenants participated in the hearings.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

CLERICAL AMENDMENT HEARING

This clerical amendment hearing was held via videoconference on June 6, 2025.

The Board issued interim order LTB-T-027930-23-IN on March 5, 2025, that set out directions to the parties for the clerical amendment hearing.

The Board decided to hold a clerical amendment hearing in accordance with the Interpretation Guideline 15 entitled Amending an Order.

The Member may hold a hearing to determine if the order contains a clerical error. If the request to amend is denied after holding a hearing, an order will be issued explaining why the request to amend has been denied. If the request to amend is granted, an amended order will be issued.

Attendance

The Tenant was represented by their legal representatives Melissa Bradley and Andrew Bolter.

Equity Builders Ltd., were represented by their legal representative Ramses L.K. Miki-Hanson.

Equity Builders Inc., and E.Q.B. Ltd., were represented by their legal representative Tim Duggan.

721 Earls Court Inc., and Ash Singh were represented by their legal representative Kim Ferreira.

Equity Builders.ca Inc., were not present or represented at this hearing although they were properly served with the Notice of Hearing by the Tenant. See Doc 5355180 at page 14.

For the purposes of this hearing, the Board directed that the file LTB-T-027930-23 would suffice as the “master file” for all submissions. However, parties would still be required to have access to all related files in the Portal as those amended orders are issued.

Preliminary Issues

1. On my own motion, in accordance with the Equity order found at paragraph [51] 2. the named landlords Joanne Smout and Tarang Shaw have been removed. This was at the Divisional Court; however I see no reason that it would not be applicable in these proceedings. Although I declined to hear from the parties on this issue, upon reflection, I believe it is fair in all the circumstances to remove them.

Adjournment Request

2. Kim Ferreira requested that this hearing be adjourned to a date after the Ontario Court of Appeal decision to grant leave and if so, the appeals hearings are complete. (see DOC-5515486 dated April 28, 2025)

3. Tim Duggan supported the request. (See DOC-5515484 dated April 28, 2025, at paragraphs 2 and 3)

4. The Tenants opposed this request. They submitted it would be prejudicial to the Tenants to delay these proceedings. (See DOC-5589408 dated May 9, 2025)

5. There was discussion as to if the request from Kim Ferreira had been submitted late, contrary to the interim order on March 5, 2025. Notwithstanding, the Board agreed to consider the motion.

6. The Board noted that at the February 27, 2025, hearing that there were no requests to postpone this hearing pending the decisions of the Court of Appeal. I note that at the February 27, 2025, hearing that Tim Duggan was appearing as an Agent for Ash Singh and did not have any instructions at that time because Ash Singh was in the process of retaining new legal representation.

7. The landlord parties appealing the decision at the Court of Appeal confirmed that they had not sought a stay at the Court of Appeal.

8. Kim Ferreira submitted that it would be procedural unfair to proceed until the Court of Appeal had decided. They submitted that the “misnomer” request should be the subject of a “new” proceeding with a proper record before the Tribunal. The implication being that the Tenants should be forced to file new applications against Ash Singh rather than addressing it in this proceeding. They referred to paragraph 82 of the Equity order.

The appropriate remedy for this breach of the duty of procedural fairness is to remit the matter back to the Board for a new hearing only on the narrow issue of whether Mr. Singh should be named as a landlord in the orders.

(emphasis added)

9. I disagreed with the characterization that the only way that Ash Singh could be added as a Landlord was via new applications. In my view, the proceedings today are a new hearing. Instructions to address this question were set out in the interim order issued on March 5, 2025. The parties were aware of the issues and afforded every opportunity to make written submissions and are permitted to augment those with oral submissions in this hearing.

10. The Board’s Interpretation Guideline 15 entitled Amending an Order indicates that correcting the name of a party is a clerical amendment where the party had an opportunity to participate in the proceedings.

A clerical error may be a Board error, or an error made by a party in documentation submitted to the Board that ends up being transcribed into an order or decision. A clerical error may include any of the following:

An incorrect name or address. For example, if the name or address is incorrect on the order but correct on the application, the error is likely clerical. If the name or address is incorrect on the application but the respondent received it and had an opportunity to participate in the proceeding, the error is likely clerical.

11. After considering the written and oral submissions from the parties, the Board decided to proceed to hear the referral and the requests for a clerical amendment and that the final orders would be delayed pending the decisions from the Court of Appeal.

12. The Court of Appeal issued their decision on July 18, 2025, Court File No., M55990 (COA-25-OM-0042) to dismiss a motion for an extension of time to file a motion for leave to appeal the decision of the Divisional Court.

Privileged documents

13. Tim Duggan submitted a written motion for an order that certain documents be removed from the adjudicative record because they contain settlement privileged

communications. (see DOC-5335690) Specifically, they allege that pages 91-94 to DOC-5093294 contain “without prejudice” discussions. In oral submissions they indicated that it is only the email found at page 91 that should be treated as privileged.

14. The Tenants denied that they documents could be seen as settlement privilege in the context of these proceedings. (See DOC-5510505, paragraphs 13-48). In oral arguments they submitted that in the alternative that there are exceptions to the doctrine of settlement privilege to permit the admission of documents in a proceeding. They submit that this was not a valid settlement offer, and that they had not authority to settle that claim in the manner proposed.

15. I have reviewed the written submissions and considered the oral arguments.

16. In my view, in these proceedings the documents are not privileged settlement discussions. The document beginning at page 92 refers to a new civil action initiated; which may be a public document. None of the Tenants are named parties, and therefore the Defendants could not agree to settlement terms affecting this proceeding.

17. Therefore, the motion is denied. I can advise the parties that those documents were not given any weight or consideration in my deliberations in the issues in this proceeding.

Jurisdiction

18. Subsection 201(1) of the Act provides that the Board may amend an application.

Other powers of Board

201 (1) The Board may, before, during or after a hearing,

...

(f) on its own motion and on notice to the parties, amend an application if the Board considers it appropriate to do so and if amending the application would not be unfair to any party.

19. The Board’s Rules of Procedures also set out that the Board may amend an application and add parties.

1.6 In order to provide the most expeditious and fair determination of the questions arising in any proceeding the LTB may:

(b) add or remove parties as it considers appropriate.

...

(h) amend an application on its own motion where appropriate, on notice to the parties

20. The Board’s Interpretation Guideline 15 entitled Amending an Order indicates that correcting the name of a party is a clerical amendment.

21. There is civil caselaw from Ontario, not Landlord/Tenant, addressing the court’s authority to correct a “misnomer” in how a party is identified in the pleadings.

22. The test of misnomer is whether it is clear that the plaintiff intended to sue the rightful defendant, that a party properly informed would have known from a reading of the statement of claim that the rightful defendant was being sued, and that the order is otherwise just; see *Stekel v. Toyota Canada Inc.*, 2011 ONSC 6507 (CanLII) at paragraph 24 and *Clarhar-Hebert v. Dan*, 2022 ONSC 5720 (CanLII), 2022 ONSC5720 at paragraph 23.

23. The Superior Court of Justice in *Clarhar-Hebert v. Dan*, 2022 ONSC 5720 (CanLII), provides a useful summary of the misnomer caselaw.

[22] As stated by Justice O’Connell in *Urie v. Peterborough Regional Health Centre*, 2010 ONSC 4226 (Ont. S.C.J.) at para. 99:

[99] Misnomer refers to misnaming. It is a recognition that in some cases pleadings can be amended to reflect that the person who is referred to in the statement of claim is actually another, or that a person identified in the generic, such as John or Jane Doe is actually a specific person.

[23] The applicable test is as follows:

1. Is there a coincidence between the plaintiff’s intention to name a party and the intended party’s knowledge that it was the intended defendant; and
2. Are there circumstances that would make such an order unjust. (See *Lloyd v. Clark*, 2008 ONCA 343, para. 4; *Ormerod v. Strathroy Middlesex General Hospital*, 2009 ONCA 697, paras. 21, 28-29; *Loy-English v. Ottawa Hospital*, 2019 ONSC 6075 (Ont. S.C.J.) at para. 2; *Stekel v. Toyota Canada Inc.*, 2011 ONSC 6507 (Ont. S.C.J.), para 35; *Patrick v. The Corporation of the Municipality of Southwest Middlesex*, 2017 ONSC 17 (Ont. S.C.J.) at paras. 17-31; *Loblaw Properties Limited v. Turner Fleischer Architects Inc.*, 2017 ONSC 6127 at paras. 29-35)

[24] In *Loy-English* Justice MacLeod states as follows at para. 21:

[21] ... (e) To be a misnomer, the plaintiff must clearly have intended to sue the proposed defendant. The pleading must be drafted with sufficient particularity that an objective and generous reading of the pleading would demonstrate that the “litigation finger” is pointing at the proposed defendant. To put this another way, the pleading must be sufficiently clear that a properly informed defendant reading the allegation would be able to recognize that he or she was the target of the allegation. The allegation must be clear and definite on its face and not held together through a series of assumptions about what the person reading the statement of claim might know.

[25] In *Stekel* Justice K.L. Campbell states as follows at para. 35:

[35] ... The proper application of the “misnomer” test cannot be reduced to a simple exercise of counting the number of parties in an effort to ensure that

there is the same number of defendants before and after the proposed amendment to the Statement of Claim. Instead, as the authorities suggest, the governing legal analysis requires more nuance, and is focused upon whether there exists a coincidence between the plaintiff's intention to name the defendant the defendant's knowledge that it was the intended defendant. If, as a result of that "misnomer" analysis and the making of the proposed amendment, the number of defendants actually increases, then that is a legal result contemplated by s. 21(2) of the Limitations Act, 2002. ...

[27] In considering whether to exercise its residual discretion to refuse to correct a misnomer, factors to be considered include: whether there is non-compensable prejudice, although the absence of prejudice does not guarantee an amendment; whether the defendant was misled; any inordinate delay in seeking leave to amend; when notice of the claim was given and the passage of the presumptive limitation period; whether the proceedings are at an early or advanced stage; and the extent of the misnomer's departure from a mere irregularity (Loblaw Properties at paras. 34 and 35; Omerod at paras. 28-32).

[28] Due diligence is not a relevant consideration on a motion for misnomer. As stated by the Court of Appeal in Stechyshyn v. Domljanovic, 2015 ONCA 889 at paras. 1 and 19:

[1] On a motion to correct the name of a defendant on the basis of misnomer, as long as the true defendant would know on reading the statement of claim that he was the intended defendant a plaintiff need not establish due diligence in identifying the true defendant within the limitation period *Kitcher v. Queensway General Hospital* (1997) 1997 CanLII 1931 (ON CA), 44 O.R. 3d 589 (C.A.) at paras 1 and 4; *Lloyd v. Clark* [2008] O.J. No. 1682, 2008 ONCA 343, 44 M.P.L.R. 4th 159 at para 4.

...

[19] If the respondents on the motion for misnomer had raised the issue of due diligence, they would not have succeeded. The respondent Domljanovic would have known on reading the statement of claim that he was the intended defendant. The jurisprudence is clear that, in such circumstances, due diligence does not apply. In *Kitcher*, the name of the correct defendant was in the plaintiff's solicitor's file. In *Lloyd*, the name of the correct defendant municipality was readily ascertainable by typing in the location of the road in issue. The law that governs the addition of a party after the expiry of a limitation period does not apply.

24. This jurisprudence also considers and applies Rule 5.04(2) of the Rules of Civil Procedure.

5.04(2) At any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or by an adjournment.

25. The Court of Appeal in *Loney v. John Doe*, 2024 ONCA 748, addressed the application of the test contained in Rule 5.04(2) to a request by the appellants to change the name of the respondents more than three years after the trial record was served.

[10] In this case, the rule governing the proposed amendment is Rule 5.04(2) which addresses the doctrine of misnomer and permits the court to correct the name of an incorrectly named party: Mazzuca, at paras. 47-48.

[11] Rule 5.04(2) provides that “[a]t any stage of a proceeding the court may by order add, delete or substitute a party or correct the name of a party incorrectly named, on such terms as are just, unless prejudice would result that could not be compensated for by costs or an adjournment” (emphasis added). This is a permissive provision while the provision in Rule 26.01, by contrast, provides that “the court shall grant leave to amend [...] unless prejudice would result that could not be compensated for by costs or an adjournment.”

[12] There are two considerations under Rule 5.04(2) that must be met: (i) the moving party must satisfy the “litigating finger” test, and (ii) the amendment must not result in non-compensable prejudice.

[13] The “litigating finger” test will be satisfied if a person with knowledge of the facts would be aware of the true identity of a misnamed party by reading the statement of claim: *Spirito Estate v. Trillium Health Centre*, 2007 CanLII 41901 (ON SC) at para. 3, aff’d in 2008 ONCA 762, 302 DLR (4th) 654. See also: *Essar Algoma Steel Inc. v. Liebherr (Canada) Co.*, 2011 ONSC 1688, 280 O.A.C. 243, at paras. 15-16.

[14] If the “litigating finger” test is met, a plaintiff seeking to correct a misnamed party need not establish due diligence in its efforts to identify the true defendant where the claim was brought within the limitation period: *Stechyshyn v Domljanovic*, 2015 ONCA 889, 129 O.R. (3d) 236 at para. 1, citing *Kitcher v. Queensway General Hospital (1997)*, 1997 CanLII 1931 (ON CA), 44 O.R. (3d) 589 (C.A.), at paras. 1 and 4. The time taken to amend the pleading after discovering a defendant’s actual name however, remains a factor to be considered under Rule 5.04(2): See *O’Sullivan v. Hamilton Health Sciences Corp.*, 2011 ONCA 507.

[15] Second, the defendant will be substituted unless there is evidence of non-compensable prejudice: *Spirito* trial decision at para. 3, citing *Davies v. Elsbey Brothers Ltd.*, [1960] 3 All E.R. 672; *Moreau v. Northwestern General Hospital (1988)*, 1988 CanLII 4810 (ON SC), 65 O.R. (2d) 128 (S.C.); *Rakowski et al. v. Mount Sinai Hospital et al. (1987)*, 1987 CanLII 4113 (ON SC), 59 O.R. (2d) 349 (S.C.); and *McArthur v. Kaal (2006)*, 30 C.P.C. (6th) 150 (Ont. S.C.).

[16] Non-compensable prejudice may include the inability to conduct a timely investigation into the circumstances of the incident, the inability to take contemporaneous witness statements and preserve evidence, the inability to conduct early surveillance, the inability to obtain a timely defence medical assessment, and diminished witness recollection and memory: *Lyman v. Chan*, 2018 ONSC 4037, 88 C.C.L.I. (5th) 142.

[17] Where the delay between the initiation of proceedings and the filing of the motion to amend is “exceptional” or “inordinate”, courts will presume prejudice to the responding party: *1588444 Ontario Ltd. v. State Farm Fire and Casualty Co.*, 2017 ONCA 42, 135 O.R. (3d) 681. This presumption can be rebutted by either an adequate explanation for the delay or evidence that there is no non-compensable prejudice based on the facts of the case: *State Farm Fire*, at para. 37.

26. Finally, I would note that the Divisional Court by their order dated February 5, 2025 has referred the issue of whether Mr. Ash Singh ought to be named as a landlord in these proceedings.

27. The Board conducted a hearing on February 27, 2025, to address this issue. At that hearing the Tenants indicated that they intended to bring a motion to add additional corporate entities. The matter was adjourned so that the parties could provide a fulsome written record on the issues and all potential parties served notice.

28. As a result, I am satisfied that the Board has the power to amend the applications to correct a misnomer or to add or remove parties in this proceeding.

29. I would also note that the Tenants motion characterizes this as a request for a review, and that Kim Ferreira made submissions regarding the application of the Boards Rules of Procedures for reviews. In my view this is not a fatal error. The Board has made it clear that this was a clerical amendment hearing, a rehearing as phrased in the interim order. The parties were well aware of the issues to be decided and there is no prejudice in proceeding, particularly given that is trite law that the Board can control its own proceedings.

30. The Tenants requested an extension of time to file this motion, found at DOC-5333653 paragraph. 47

31. Kim Ferreira and Tim Duggan submitted that they cannot extend time to file an application. That is a mischaracterization of this proceeding and the request. This is a clerical amendment hearing, in part directed by the Divisional Court to decide if the Board ought to name Ash Singh as a landlord. In my view a request to extend time to consider the courts directions is not required in regard to Ash Singh.

32. For the remaining corporate landlord's, I am satisfied that the request is timely in the context of this new proceeding, and that a request to extend time for a clerical amendment is not required. Ash Singh had personal knowledge of all of the named corporate entities including the one he routinely used that being Equity Builders Ltd, the

Saskatchewan based corporation. All of the corporate entities were on notice of this proceeding as such there is no prejudice to them and they are represented by legal counsel. There is no issue of non-compensable prejudice because Ash Singh through legal counsel was present and/or represented throughout these proceedings and was afforded every opportunity to examine and cross-examine witnesses, whether on his own behalf as an individual or on behalf of any of the corporate entities.

Equity Builders Ltd.

33. Ramses L.K. Miki-Hason submitted that Equity Builders Ltd is a Saskatchewan based corporation that has no relationship with any of the parties to these proceedings and that they were improperly named in the proceedings. They requested to be removed from the proceedings.

34. The reason for this request is because Ash Singh held himself out as the principal of Equity Builders Ltd throughout these proceedings, in particular under oath adopting his will say statement where he states he is the principal of Equity Builders Ltd. In addition, the real Landlord took no action to correct the record to advise the Board of who the properly named Landlord's should have been.

35. None of the other parties, including the legal representative for Ash Singh opposed this request.

36. Therefore, the request to remove Equity Builders Ltd., is granted.

Equity Builders.ca Inc.

37. The Tenant requested to add Equity Builders.ca Inc., as a named Landlord. They submit that at all material times that Ashwyn Singh was the only named Director and Officer of this corporation, that this nom de guerre was one name among many used interchangeably by Ashwyn Singh and others in communication with the Tenants.

38. On an uncontested basis Equity Builders.ca Inc., is added as a named Landlord.

Ash Singh

39. Kim Ferreira requested that Ash Singh be removed as a named party. Although they did not provide written submissions on this issue, they provided a singular comment in their submissions for a stay that I have considered. (See DOC-5515486, paragraphs 11)

40. The Tenants motion with respect to amending party names is found at DOC-5333653. At paragraph 2.a., b. they request that Ash Singh (a.k.a. Ashwyn Singh) be added or remain as a named Landlord.

41. In their written submissions at paragraphs 31 and 32, the Tenant state that they only discovered the error in the landlord names after the Equity decision was released, and in preparation to respond to the Divisional Courts referral back to the Board.

42. The Tenants also set out at paragraphs 65-78 for why Ash Singh should be a named Landlord in these applications.
43. The Tenant submitted that Ash Singh was in contact with the Tenants representative throughout all of the Board proceeding. The Agents and legal representatives always held out that they were there on instructions from Ash Singh.
44. The Tenants referred to the Tenant's Book of Evidence at DOC-5333662 beginning at page 485, where Ms Seale at the May 5, 2023, hearing advised the Board that Ash Singh is the Landlord. Ms Seale stated that Ash Singh is the Landlord and director and owner, and that he (Ash Singh) is the only one that has firsthand knowledge of this case.
45. The Tenants referred to DOC-1282579. That is an email from Ms Seale post-May 5, 2023 hearing in which Ms Seale provided the email addresses for Ash Singh and Tarang Shah so that per the Board direction they could be added to all of the files. I would note that the Board would have added these two parties in all of the applications based on this so that they would receive all communications from the Board.
46. The Tenants referred to the various notices of hearings issued by the Board that listed Ash Singh as a Landlord party to these proceedings. They submitted that at no time did Ash Singh object to being named in the proceedings.
47. The Tenants referred to their transcript to the September 29, 2023 hearing found at DOC-5333662 at page 489, where Ash Singh identifies himself as the Landlord. They also highlight other references to Ash Singh referring to himself as a landlord. (see page 496, 498-500, 501, 503, 514.
48. The Tenants also referred to the will-say statement of Ash Singh found at DOC-2119183 where Ash Singh states at paragraph 1 that he is the principal of the Landlord, Equity Builders Ltd.
49. The Tenants submit that in relation to this tenancy that it was Ash Singh that was the responsible directing mind, making all the decisions regarding their tenancy, regarding the lockout, access, compensation offers and return to the rental unit. They submitted that Ash Singh also used a number of email addresses when communicating with the Tenants including ashsingh@equitybuilders.ca, and ash@eqbltd.ca.
50. The Tenants submit that it was self-serving of the Landlord not to correct the record because it avoided enforcement of the Board's orders. They also submitted that the proper name of the Landlord's was not in the pleading at the Divisional Court and the Court of Appeal and that the Landlord perpetuated the Landlord's names in those proceedings.
51. Kim Ferreira made oral submissions on behalf of Ash Singh.
52. They adopted the written submissions of Tim Duggan found at DOC-5515484 for submissions on why 721 Earls Court Inc., should not be added as a named Landlord. However, in oral arguments they agreed that a named Landlord in the lease agreements should be named in a Tenant application.

53. They rightly did not comment on the Landlords use of various nom de guerre in other Board proceedings against these Tenants beyond agreeing that whomever serves a notice should be the proper landlord.

54. At the hearing Kim Ferreira argued that adding Ash Singh is time limited. They submitted it was not raised in the proceedings.

55. They submitted corporations are separate individual legal entities that they make their own decisions and are themselves corporately liable for those decisions.

56. The submitted that it is trite law that the directors and officers of a corporation are not personally liable for the corporate decisions unless the corporate veil has been pierced.

57. They submitted that the Board may “go behind” the corporation to find individuals personally responsible or landlords. They stated that at no time has this been sought by the Tenants in this proceeding.

58. They submitted that on May 5, 2023 the Tenants were made aware that Ash Singh was the Landlord. The Tenants did not subsequently seek to amend their applications upon hearing this. They submit that the one-year limitation period would have commenced at that time. They submit that section 29 of the Act would now statue bar any amendment because more than a year has passed. They stated that issue estoppel applies.

59. They also submitted that the Board does not have authority to extend the time to amend the application or to make clerical amendments to the orders.

60. They submitted that the Tenants have not submitted a request to extend time and that the Board should not do so on its own motion because it would defeat the intents and purposes of the Act and for providing finality to the Landlord to know what they face.

61. They submitted that the will-say statement of Ash Singh was made in his capacity as the principal in the corporation Equity Builders Ltd., and not in his personal capacity.

62. They restated their argument that the procedure to add Ash Singh should be in the form of new applications that had been raised and addressed above. They indicated that if the extension of time is granted and in a new application Ash Singh should be permitted to address the newly formed applications and that the corporate veil is being pierced. I note it again given their insistence that they felt it important to protect the record on this point.

63. They stated that the Agent (Ms Seale) that attended the May 5, 2023 hearing with instructions from Ash Singh to seek an adjournment lacked any other authority to add Ash Singh as a Landlord (or to have named him as the Landlord) and likely spoke out of turn in doing so. They submit that the Board was free to add Ash Singh at this point, but ought to have more formally put him on notice that that was being done.

64. They submitted that Ash Singh in his dealings with the Tenants throughout these proceedings he was doing so in his corporate capacity and not in his personal capacity. That Ash Singh attended the proceedings does not in itself that he was acting in a personal capacity.
65. They submitted that the only reasons that the Tenants are seeking to maintain Ash Singh as a named Landlord is because he has deep pockets.
66. They agreed that in the prior hearing, the Board did ask for submissions on who should be named as a Landlord in these proceedings and that neither party made any submissions in that regard. Tim Duggan clarified that the Divisional Court did note that no submissions were made, and that the Board did not follow-up on this issue at paragraphs 74-79 of the Equity decision.
67. They submitted that the test to add or name Ash Singh has not been met, even when looking at it from the perspective of section 202 of the Act.
68. They submitted that they do not believe that there was an illegal act in these proceedings that warrant piercing the corporate veil.
69. Finally, they submitted that it was up to the Tenants to have done their own due diligence to determine who their Landlord is. It may well be that the people they dealt with and the corporations they were employed by should be properly named.
70. They also submitted that if Ash Singh is added, that he should be afforded an opportunity to cross examine the Tenants further.
71. The Tenant Representative Melissa Bradley made final arguments. They stated that the purpose of the Act is tenant protection. That there is no intent to get into corporate law, the Act already has a broad definition of who is a landlord.
72. They submitted that section 202 of the Act permits the Board to pierce the corporate veil when considering the real substance of all transactions and the good faith of the parties.
73. They submitted that the Board on their own motion raised the question of who the properly named Landlord on May 5 was, 2023 and that the Landlord's Agent provided that response. If that was in error Ash Singh did not correct the record.

Analysis

74. As discussed above the case law and jurisprudence of this Tribunal is that there is lawful authority to add parties to this proceeding.
75. Subsection 202(1)(a) of the Act provides that the Board may disregard the outward form of the separate corporate existence of participants.

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants;

76. It is undisputed that at all material times, Ash Singh was the sole director and officer of the various corporate entities. In my view he is the directing mind behind all of them. As noted in the Board's interim order *Reinstated Residents v. Equity Builders Ltd*, 2024 ONLTB 16651 dated March 11, 2024 Ash Singh is noted at paragraph as 111 as being the one making all the decisions that were affecting the Tenants.

77. The Board heard that Ash Singh wanted direct contact with the Tenants at any time to negotiate a resolution to these applications.

78. As noted by the Court of Appeal in *Slapsys (1406393 Ontario Inc.) v. Abrams*, 2010 ONCA 676 (CanLII), the definition of "landlord" in the Act is not restricted to the owner of a rental unit and it clearly contemplates that there may be more than one "landlord".

79. Subsection 2(1) of the Act states :

" 'landlord' includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent."

80. I would also adopt the reasoning in EAL-87318-19-RV, 2021 CanLII 150009 (ONLTB) at paragraph 12.

The definition of "landlord" is intended to be broad as a form of consumer protection for tenants. That is also true for the broad definition of "tenant" contained section 2(1) of the Act. It is not uncommon for a tenant to deal exclusively with a property management company or other personal representatives of the owner and to have no knowledge of who actually owns the residential complex they live in. The broadness of the definition helps ensure that a tenant is not required to conduct expensive property searches to discover who is the owner of the building they live in, but instead they can

name in an application filed with the Board the person or party who has assumed the right and responsibilities of the landlord during their tenancy

81. It is trite law that the Act is remedial legislation with a “tenant protection focus” that has been determined at the Divisional Court and the Ontario Court of Appeal. The Court of Appeal in *Smith v. Youthlink Youth Services*, 2022 ONCA 313 (CanLII) at paragraph 25 affirmed a prior Court of Appeal decision that the Act is designed to redress the imbalance of power and removes leases from the ordinary contract law principles.

[25] How is s. 5(k) to be understood in the context of the Act? The starting point is that the Act is “remedial legislation designed to redress the imbalance of power between landlords and tenants. It removes leases from the ordinary contract law principles that would otherwise govern and establishes extensive statutory rights for tenants”: *White v. Upper Thames River Conservation Authority*, 2022 ONCA 146, at para. 10. But this remedial purpose is relevant only where a landlord-and-tenant relationship exists, and s. 5 makes plain that not every situation in which accommodation is provided is to be regarded as a landlord-and-tenant relationship.

82. Kim Ferreira submissions that the test for determining who is a Landlord was not met are rejected. The failed to indicate which part a test, if any, that Ash Singh could not be reasonably found on a balance of probabilities to not be a landlord.

83. Finally, regarding any suggestion that Ash Singh should have some further opportunity to cross-examine the Tenants on this issue, they failed to call any of the Tenants that were present in the hearing and they did not serve any summons on any of the Tenants that they believed would have relevant information to assist the Board in determining this question.

84. In my view in consideration of all of the testimony and evidence in these proceedings it is clear on a balance of probabilities that Ash Singh is/was at all times a person enforcing the rights of a Landlord and therefore meets the definition of Landlord.

85. Given that Ash Singh was aware of these proceedings before they were initiated, and throughout and participated fully themselves with legal representation and failed to disclose that they were improperly named and in fact misled this Board about their relationship with Equity Builders Ltd., strongly supports that there is no unfairness in adding him personally as a Landlord, and in doing so piercing the corporate veil. This would seem especially true as the respondents intentionally failed to address this issue during the original hearing, when given that opportunity, which suggests they were not conducting themselves in good faith.

86. This in my view is a just outcome to redress the power imbalance being exerted by Ash Singh by and through the various corporate entities to shield themselves from liability.

87. Therefore, Ash Singh shall be added as a named Landlord.

Request to add parties

88. The Tenants requested to add Equity Builders Inc., E.Q.B. Ltd., and 721 Earls Court Inc. as additional named Landlords.

89. In their written submissions the Tenants state that some Tenants have lease agreements naming E.Q.B.Ltd., as Landlord, and some have 721 Earls Court Inc., as a named Landlord. They also state that some have lease agreement with the former Landlord before the residential complex was purchased by 721 Earls Court Inc.

90. They also submitted that the Tenants have received correspondence from employees of these corporate entities, including Ash Singh and in the name of other entities that are not legal corporations.

91. Kim Ferreira adopted the written submissions of Tim Duggan found at DOC-5515484 for submissions on why 721 Earls Court Inc., should not be added as a named Landlord. However, in oral arguments they agreed that a named Landlord in the lease agreements should be named in a Tenant application.

92. Tim Duggan provided written submissions at DOC-5515484 on behalf of their clients.

93. They submit that the Tenants were responsible to properly name their landlord in their own applications through the proper exercise of due diligence.

94. They submit that the Tenants took no action to amend their own applications to name any of the corporate landlords.

95. Finally, they submit that the Tenants are out of time file this request.

Analysis

96. For the reasons set out above in particular those at paragraph 80 and the discussion on the Board's jurisdiction to correct a misnomer.

97. I would also say that the conduct of Ash Singh to have misled the Tribunal in his statement that was adopted under oath, that they are a principle to Equity Builders Ltd., when in fact that was not true, supports that these corporate landlords' should be added.

Prior Orders:

98. The Board issued an interim order on May 8, 2023. (the restoration order) In that order the Board determined that some Tenants had been illegally locked out by their Landlord. The Board ordered the Tenants be put back into possession.

99. On July 17, 2023, the Divisional Court issued its endorsement regarding an appeal of the Board's interim restoration order. The Divisional Court quashed the appeal and directed the parties to the Board to reschedule the hearings.

100. The Board also issued an interim order on May 8, 2023, directing the Landlord to preserve the tenancies and property of the Tenant's. (the preservation order) In that order the Board was not satisfied that the Tenant's were locked out illegally by the Landlord.
101. On July 20, 2023, the parties appeared before the Board, where oral directions were provided to confirm dates for disclosure and hearings.
102. On March 11, 2024, the Board issued an Interim Order that set out the findings of the Board following the conclusion of the hearings and on review of all submissions by the parties.
103. The prior orders are incorporated into this order by reference. They should be read in conjunction with this order that will set out remedies and final orders for this application related to 721 Earls court Drive, Sarnia, building B as a result of a fire that occurred February 19-20, 2023.

Determinations:

103. The March 11, 2024, Interim order confirmed the May 8, 2023 (restoration) order that the Tenants had been illegally locked out of their rental order.
104. The March 11, 2024, Interim order confirmed the second May 8, 2023 (preservation) order that the Landlord had and continues to have lawful authority in accordance with the Order to restrict access to units set out in that Order.
105. The March 11, 2024, Interim order found that the Landlord substantially interfered with the reasonable enjoyment of the rental units or residential complex by the Tenants or by members of their households.
106. The March 11, 2024, Interim order also found that the Landlord obstructed, coerced, threatened or interfered with the Tenants.
107. The Tenant testified that they have resided at the unit since March 2022, and that they are employed full time.
108. The testified that they had notified their insurance provider of the fire. That the insurance provider subcontracted Belfor to assess their unit. They attended on February 21, 2023 with Belfor and other than the smell of smoke the unit was fine and undamaged.
109. The Tenant testified that they had signed the N11 termination notice and offer because the Landlord had indicated it would be a long time before they would be able to return to the unit. The Tenant testified that they subsequently revoked their consent on the N11 notice, because they felt the Landlord had not been truthful.
110. The Tenant testified that because of the lockout and that they have found a new place, they no longer want to return to the unit. They testified that they moved into a new

rental in April 2023. They further testified that they afforded sufficient time to retrieve their possessions, recalling that it was in the March 2023 timeframe.

111. The Tenant testified that they did receive the \$2,000.00 compensation offer from the Landlord, and believed they also received their rent deposit and security deposit.

112. They testified that they Landlord was constructively and proactively trying to terminate tenancy agreements instead of ensuring the Tenants had a home to return to. They testified that the Landlord is disrespectful and dishonest to the Tenants.

Remedies

113. The Tenant did not claim general damages. They testified that they had received the \$2,000.00 compensation offered by the Landlord when they provided vacant possession of the unit to the Landlord.

114. The Landlord submitted that where a Tenant had been paid this amount, that any award should be offset. I disagree. The Act provides for different remedies for different reasons. The Tenant did not pursue of the remedies, and did not pursue those listed in the application, particularly those under remedy 11 set out in the application.

115. I am satisfied that the reasons for the financial offer, and acceptance, should not detract from the parties seeking additional remedies as was done in this case.

Rent Difference

116. The Tenant testified that the new rent they are paying is \$280.00 per month higher than the rent they were paying at 721 Earls court. They are seeking the difference in rent in reimbursement for 12 months, totalling \$3,360.00.

117. The Tenant testified that they did not want to be homeless, as a result, found a new place to move into even though the rents were higher. They testified that the Landlord had told them to look for another place because the fire had caused a lot of damage.

118. I am satisfied that the rent differential in the amount \$3,360.00 is appropriate in all the circumstances. I note that the Landlord was not being candid with tenants about returning to their units, and that faced homelessness, or finding a new rental, that where the latter is the option chosen that there should be compensation.

Rent Abatement

119. The Tenant is seeking an abatement of rent for the month of February that he was not able to occupy his rental unit for 8 days in the amount of \$261.68.

120. The Tenant had been illegally locked out and could not occupy his rental unit as intended. Therefore, this amount shall be ordered. The Landlord submitted that the Tenant did not have an obligation to pay rent during this time.
121. The City of Sarnia amended their Order to permit the Tenants to return on February 27, 2023. Therefore, it is appropriate to order that the Landlord compensate the Tenants for the 2 days they were illegally locked out in February 2023, in the amount of \$65.42.

Costs

122. The Tenant requested that their disbursement costs totaling \$700.00 be ordered. The Tenant testified that they were not seeking legal fees, only disbursements, This is broken down as follows:
- a. Application fee: \$53.00;
 - b. Other disbursements incurred by Legal Aid totalling \$647.00.
123. The Board's Interpretative Guideline 3, entitled Costs provides that the Board may order costs.

In most cases, the only costs allowed will be the application fee. Where appropriate, this cost will be ordered regardless of whether or not the applicant seeks such a remedy.

Other Costs. A party who wants to claim costs in addition to the application fee should be prepared to speak to the matter and to provide support for the claim. The other party will also be allowed to make submissions on the issue.

124. The Landlord was aware that the Tenant was seeking these costs as they were set out in the will say statement and confirmed in oral testimony. The Landlord had the opportunity to cross-examine the Tenant. The Landlord did not make submissions on costs.
125. I am satisfied that the application fee and disbursements should be ordered. The Tenants were represented by a Community Legal Clinic, funded by Legal Aid Ontario, and as such I have no reason to doubt the veracity of this amount.

Administrative Fine

126. The Tenants have sought an order that the maximum fine administrative fine against the Landlord be ordered.
127. Section 207(1) of the Act establishes that the Board has authority to award payment to any given person, of up to \$35,000.00. This amount is independent of any award to the Tenant.

207 (1) The Board may, where it otherwise has the jurisdiction, order the payment to any given person of an amount of money up to the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court. 2006

128. Section 31(1)(d) of the Act provide that a Tenant may request that the Landlord pay a fine of up to \$35,000.00 the current jurisdiction of the Small Claims Court.

31 (1) If the Board determines that a landlord, a superintendent, or an agent of a landlord has done one or more of the activities set out in paragraphs 2 to 6 of subsection 29 (1), the Board may,

(d) order that the landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court;

129. Under section 196 of the Act, where the Board receives information that an applicant owes money to the Board as a result of failing to pay any fine, fee or costs, the Board may, pursuant to its Rules:

refuse to allow an application to be filed where such information is received on or before the day the application is submitted,

stay or discontinue a proceeding where such information is received after the application has been filed but before a hearing is held,

or delay issuing an order or discontinue the application where such information is received after a hearing of the application has begun.

130. While it is not binding upon me, the Board's Guideline 16 outlines relevant considerations in determining the appropriateness of an administrative fine:

An administrative fine is a remedy to be used by the Board to encourage compliance with the Residential Tenancies Act, 2006 (the "RTA"), and to deter landlords from engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA and other remedies will not provide adequate deterrence and compliance. Administrative fines and rent abatements serve different purposes. Unlike a fine, a rent abatement is intended to compensate a tenant for a contravention of a tenant's rights or a breach of the landlord's obligations. File Numbers: LTB-T-074597-22 (formerly SOT-15435-20) LTB-T-074685-22 (formerly SOT-16695-20)

131. In effect, I should consider the nature and severity of the breach, the effect of the breach on the tenant, and any other relevant factors, such the conduct of the Landlord.

132. Deterrence for egregious conduct, beyond whatever deterrent effect simple damages might provide, is an over-riding factor.

133. In my view this is an appropriate case in which to impose the maximum administrative fine in the amount of \$35,000.00. The Landlord not only blatantly disregarded the Act but also disregarded an order putting the Tenant back in possession. The Landlord's behaviour demonstrates a contempt for the Board and for the Act where they engaged in 'self-help' that must be addressed. I believe there are no other remedies that would provide adequate deterrence and compliance in these circumstances.
134. The Tenant submitted they were approached by Joanne Smout and advised that they would not be allowed to return to their unit as it was completely destroyed and required significant renovations. The Tenant is a immigrant to Canada believed the landlord and signed a lease for a new place. The Tenant became aware from a newspaper article that he was allowed to return to his unit. He immediately emailed the landlord stating that he was withdrawing his N11 agreement. The Tenants also submitted there were coerced into signing an N11 and illegally locked out of his unit for 150 days.
135. The Landlord was not able to provide a lawful authority for locking out the tenant once the City of Sarnia declared it safe for the Tenant to return. Occupancy was granted by the City of Sarnia because they deemed it safe. The Landlord did not appeal that order.
136. The Landlord did not voluntarily put the Tenants' back in possession; putting them to the further delay of requiring them to have the Sheriff enforce the Orders. The Landlord, then changed the locks, as noted so that the Landlord would have a "master key" for all units. This too is an egregious act because the Landlord did not follow the proper way to address the issue of the key which is for the Landlord to file an application against the Tenant. It was undisputed that the Landlord was given a copy of the key because they chose not to be available to return the Tenant into possession and provide keys to the Tenant.
137. The Board notes that the Landlord had been found previously to have illegally locked out Tenants after a fire in CET-10108-11, 2011 CanLII 13385 (ON LTB), that was confirmed at the Divisional Court, and at the Ontario Court of Appeal. A small fine of \$500.00 had been awarded in that order "to deter the Landlord from contravening the Act in the future." That application involved a single rental unit.
138. The illegal lockout in this instance where the City of Sarnia permitted Tenants' to return, involves 14 applications before the Board. A further application was withdrawn; and another abandoned.
139. I note also that the endorsement issued the Divisional Court July 17, 2023, where the Landlord had obtained an automatic stay by appealing the Interim Order issued on May 8, 2023.

Para 23

Lawful termination of a tenancy under s. 50 requires a minimum of 120 days' notice to the tenant with such notice containing a right of first refusal to occupy the premises after the repairs or renovations are completed. I

note that, in this case, neither of these tenant safeguards were respected by the Landlord before locking out the Tenants.

Para 24

It is contrary to the spirit and intent of the legislative scheme governing residential tenancies provided for under the RTA, to grant the Landlord an appeal and therefore an automatic stay of the Order. To do so would deny the Tenants their presumptive right to occupy their units in circumstances where the Landlord has failed and/or refused to comply with the provisions of the RTA and has resorted to "self-help". I find that the automatic stay under s. 25 of the SP PA was never intended to be used by a landlord to subvert the presumptive right of a tenant to occupy their rented home.

Para 25

By virtue of the Order being interlocutory in effect, I find the Landlord had no right to appeal from the Order. Notwithstanding the Landlord's claim it was denied the opportunity to make full answer and response to the Tenants' applications, Mr. Singh has yet to place his direct evidence before the court despite the passage of more than two months since the Order was made. I find the Landlord's conduct is subversive of the processes enacted under the RTA for the protection of tenants, and brings the administration of justice into disrepute. I further find the Landlord's appeal of the Order is an abuse of process and was intended to delay proceedings before the Board and delay the Tenants' return to their residential units.

Para 32

I find that, in the circumstances of this case having regard to the findings made and, in particular, my finding that the appeal was tactical and intended to delay these proceedings, the Tenants are entitled to their substantial indemnity costs of the motion in the amount claimed.

140. The Landlord ought to have known that locking out Tenants without lawful authority would carry consequences, as it had in the past with this particular Landlord, Ash Singh. The Landlord was found to have abused his appeal rights to the Divisional Court with the intent to delay the Tenants return, and even then, compelled them to have the Sheriff enforce the restoration order.
141. The Landlord's actions not only constitute a breach of the May 8, 2023, order and that of the Divisional Court their actions constitute an egregious disregard of the Board's authority and of the Act. One of the explicitly stated purposes of the Act is to prevent unlawful evictions. In this case, despite being aware of a Board order putting the Tenant back in possession of the unit, the Landlord refused to voluntarily cooperate and once possession was restored, proceeded to change the locks to the unit. Essentially the Landlord locked out the Tenant not only in the absence of legal authorization but in spite of the Tenant's explicit legal authorization to possess the rental unit. This behaviour must be discouraged in the strongest terms.

142. I also note that Co-operators confirmed that the Landlord was compensated for lost rental income while the Landlord had illegally locked out the Tenants. In my view the Landlord should not be “rewarded” for their egregious conduct; however, that remains between the Landlord and their insurer.

143. A prior fine does not appear to have been a sufficient deterrent and suggests a substantial fine may be appropriate in these circumstances.

144. The Tenants submitted that the Landlord is a “large corporate landlord” whose primary business is residential tenancies. As such, it is likely they may find themselves back in front of the Board and that therefore the maximum fine is appropriate to deter any future similar conduct of this Landlord.

145. The Landlord submitted an administrative fine is not warranted; that there was no blatant disregard for the RTA, rather the Landlord was only concerned with the safety and well-being of its tenants.

The Landlord made the difficult decision of restricting the ability of the tenants of the Residential Complex to access or return to their respective units, until the repair and remediation work had been completed. This difficult decision was made in the interests of the safety and well-being of the tenants, as the Landlord’s professionals had advised it that there was a risk to the tenants’ safety and well-being if they returned to the Residential Complex before all work had been completed and before the appropriate professionals confirmed that the Residential Complex was fit for occupancy.

146. In my view, it was not unreasonable for the Landlord to be concerned about the Tenant’s welfare, regarding the presence of asbestos or air quality. However, I also note that in part, this concern was also informed by a concern that if the Tenants returned that the Landlord may be liable for any impacts on the tenants’ health that might arise if they returned. That concern is not a lawful authority to lock out the Tenants. The Landlord ought to have requested an order from a competent authority to restrict access or appealed the City of Sarnia order if they disagreed with it. The Landlord did neither of these things.

147. I also note that the Tenant had been able to retrieve their possessions and provide vacant possession to the Landlord, albeit under less than ideal circumstances in the March 2023 time-frame. Therefore, I do not find that in this instance that the lockout was for 150 days. However, there was an illegal lockout, that only effectively ended because the Tenant chose to move on, and while the Tenant mitigated their circumstances, it was not because they wanted to, but were coerced into doing.

It is ordered that:

1. The total amount the **Landlords / Landlord's Agent / Superintendent** shall pay the Tenant is \$4,125.42. This amount represents:
 - \$65.42 for a rent abatement.
 - \$3,360.00 for the difference in rent.
 - \$700.00 for the cost of filing the application, and other disbursements.
2. The Landlords shall pay the Tenant the full amount owing by March 24, 2024.
3. If the Landlord does not pay the Tenant the full amount owing by March 24, 2024, the Landlord will owe interest. This will be simple interest calculated from March 25, 2024, at 7.00% annually on the balance outstanding.
4. **If the Landlords do not pay the Tenants the full amount owing by March 31, 2026, then commencing April 1, 2026, the Tenant may deduct this amount from the lawful rent until it has been paid in full.**
5. **The party Equity Builders Ltd., is removed as a named party in these proceedings.**
6. **The party Ash Singh is named as an individual Landlord respondent.**
7. **The corporate entities Equity Builders Inc., E.Q.B. Ltd., 721 Earls Court Inc. and Equity Builders.ca Inc are added as Landlords.**
8. **The named parties Joanne Smout and Tarang Shah are removed as named parties in these proceedings.**
9. The **Landlords ~~Equity Builders Ltd.~~**, shall pay to the Landlord and Tenant Board an administrative fine in the amount of \$35,000.00 by **March 31, 2026.**

March 20, 2026
Amended Date Issued

Robert Patchett
Vice-Chair, 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.

Payment of the fine must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance.