



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

Citation: NANDA v MUSHTAQ, 2026 ONLTB 28164

Date: 2026-04-07

File Number: LTB-L-081371-25-RV

In the matter of: UPPER, 71 OLIVIA MARIE RD
BRAMPTON ON L6Y0M4

Between: Chand Krishan Nanda Landlord
Bindu Nanda

And

Jehangir Mushtaq Tenant

Review Order

Chand Krishan Nanda and Bindu Nanda (the 'Landlord') applied for an order to terminate the tenancy and evict Jehangir Mushtaq (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-081371-25 issued on February 2, 2026.

On February 17, 2026, Noreen Khan, a Potential Party requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 24, 2026 interim order LTB-L-081371-25-RV-IN was issued, staying the order issued on February 2, 2026

This application was heard by videoconference on March 31, 2026.

The Landlords, the Landlords' legal representative, L. Walker, the Tenant, and N. Khan, attended the hearing.

Determinations:

1. Rule 26.1 of the Board's Rule of Procedure allows a person who is directly affected by a final order to request a review of an order.

2. There is no dispute that only the Tenant, Jehangir Mushatq is listed as a Tenant on the lease agreement. There is also no dispute that Noreen Khan (NK), is the ex-spouse of the named Tenant and also occupies the rental unit.
3. NK submits that she was not served with a copy of the N12 notice, application or notice of hearing. As a result, she was not reasonably able to participate in the hearing held January 21, 2026.
4. There is no dispute that the Tenant received all the relevant documents with respect to the Landlord's L2 application, was aware of the hearing but did not attend because he was on a business trip. There is also no dispute that the Tenant did not communicate with NK the details of the application or the hearing.
5. The Landlords take the position that NK is not a lawful tenant and only identified as an occupant of the unit, as such, the N12 notice, application and notice of hearing were not required to be served to her. However, it is not disputed that a copy of the notice of hearing was provided to NK by the Landlords on January 18, 2026.
6. There is no dispute that the Tenant and NK have been in an on and off relationship since 2022. It was also undisputed that The Tenant and NK have communicated their on and off relationship to the Landlord, Chand Krishan Nanda (CN).
7. It is undisputed that on October 31, 2024, the Tenant sent a text message to CN advising that he and NK are going through separation, that he is living in a separate location, that all bills need to be sent to NK and that she also needs to pay rent. There is also no dispute that CN sent the Tenant's text messages to NK and she agreed to pay the rent and utilities. There is no dispute that NK paid rent for one month, December 2024.
8. There is also no dispute that as of December 18, 2024, rent for November 2024 had not been paid and therefore, CN addressed the issue with NK. There is no dispute that at such time, NK advised CN to collect the rent from the Tenant, the lease agreement is under his name and that she will only pay for things under her name.
9. There is no dispute that the Tenant sent an e-mail to CN on September 10, 2025 advising that he has not been living in the unit for more than a year and that the lease was never renewed. There is no dispute that both the Tenant and NK have requested the Landlord to include NK as a named party to the lease. There is no dispute that since the September 10, 2025 e-mail, the Tenant continues to attend the property to care for his children when NK is away, and that he has continued to pay the rent and utilities for the unit up to the date of the hearing. CN acknowledges that both the Tenant and NK have requested that NK be added to the lease, but he has refused as the lease has continued on a month-to-month basis and the Tenant has continued to pay the lawful rent, there is no need to make changes to the lease.
10. There is also no dispute that the Landlord has communicated with both the Tenant and NK with respect to issues within the unit. There is no dispute that all N1 notices of rent

increase for 2024 and 2025 were only issued to the Tenant and that he has paid all of the rent increases.

11. There is also no dispute that the Tenant did not inform NK about the N12 notice, application or notice of hearing. There is no dispute that the N12 compensation was paid and accepted by the Tenant. The Tenant argues that he accepted the compensation because he was not aware of the law and because his relationship with NK is not good and therefore, prefers not to communicate with NK. The Tenant testified that he continues to pay the rent so that his children can have a place to live.
12. The Tenant takes the position that he advised the Landlord he vacated in October 2024, September 2024, and in January 2026. On review of the communication from the Tenant, the Tenant does not state that he has vacated the unit or that he relinquishes care and control of the unit. The Tenant's text communication on October 31, 2024 states "I'm living at separate location". The September 10, 2025 e-mail states, in part, "I'm not living at the 71 Olivia Marie house for more than a year now and I've already notified you regarding this." The January 2026 communication relates to a letter the Tenant submitted to the LTB further stating that he does not currently reside at the property.
13. NK argues that she should be considered a tenant because the Landlords accepted a rent payment from her and because the landlords have discussed ongoing maintenance issues with her. NK acknowledges that her text communication has been contradictory and confusing, but the Landlord is aware that the Tenant is no longer residing in the unit, as such, she is the lawful tenant.

Analysis

14. The issue to be determined is whether NK is a tenant within the meaning of the Act and, if so, whether her failure to receive notice of the proceeding resulted in her not being reasonably able to participate in the hearing.
15. Subsection 2(1) of the *Residential Tenancies Act, 2006* (the 'Act') defines a tenant as follows:

"tenant" includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives...
16. In order to find a tenancy between the parties there must be a contract for the rental of the unit. Based on the evidence before me, on a balance of probabilities, I find that NK led insufficient evidence to establish that she entered into a rental agreement with the Landlords. There is no dispute that NK and the Tenant requested that NK be added to the lease agreement, but this was never accepted by the Landlords. Simply making a request to be added in the lease does not automatically create a rental agreement.
17. NK's argument that she is deemed a tenant because the Landlords accepted a single rent payment is unreasonable. In *Jemiola v. Firchuk*, [2005] O.J. No. 6085, the Divisional Court stated that the definition of "tenant" is broad and inclusive and should be broadly and liberally construed. The Court noted, however, that a child who was an occupant of the

rental unit in which their mother was the tenant, who wanted to remain in the rental unit after their mother's death and who made a single payment of rent after their mother's death was not a tenant. See also: *Jeffrey v. Masek*, [2006] O.J. No. 5883.

18. Although the issues in this case do not relate to the death of a tenant and a mother and son relationship, the issues are similar in that NK made a single rent payment. I agree with *Jemiola v. Firchuk*, [2005] O.J. No. 6085, that a single rent payment does not deem NK a tenant.
19. The Board's Interpretation Guideline 21 provides that; a spouse of a tenant might not be considered a tenant depending on the facts. For example, if only one of two spouses is listed on the tenancy agreement as a tenant, the spouse who is not listed may not be a tenant for the purposes of the RTA.
20. Subsection 2(1) of the Act defines a "spouse" as a person:
 - (a) to whom the person is married, or
 - (b) with whom the person is living in a conjugal relationship outside marriage, if the two persons,
 - (i) have cohabited for at least one year,
 - (ii) are together the parents of a child, or
 - (iii) have together entered into a cohabitation agreement under section 53 of the *Family Law Act*; ("conjoint")
21. Subsection 3(2) and (3) of *Ontario Regulation 516/06* states that, where a tenant of a rental unit vacates the rental unit without giving a notice of termination and without entering into an agreement to terminate the tenancy, and their spouse remains who occupies the rental unit as their principal residence, the spouse is then included in the definition of "tenant", except where any one or more of the following criteria exists:

...
22. In this case, I am not satisfied that the Tenant has vacated the rental unit. While the Tenant advised CN that he was no longer residing in the unit, there is insufficient evidence to establish that he relinquished care and control of the unit.
23. The evidence establishes that both the Tenant and NK requested that NK be added to the tenancy agreement, and the Landlord refused. The Landlord continued to treat the Tenant as the sole tenant, including issuing rent increase notices only to him. The Tenant continues to pay the lawful rent, by NK's own admission, she ceased making payments on the basis that she was not listed on the lease. This conduct is inconsistent with the existence of a tenancy between NK and the Landlord. NK cannot rely on selective aspects of the tenancy relationship to establish tenant status where overall evidence does not support the existence of a tenancy.

24. While I accept that the Tenant is not residing in the rental unit, this alone is insufficient to establish that he relinquished care and control of the unit. Individuals may reside elsewhere while maintaining a tenancy, and absence from the unit is not determinative.
25. Based on the evidence before me, on a balance of probabilities, I find that the Tenant continues to maintain care and control of the rental unit. He has continued to pay the lawful rent and utilities, accepted rent increases, and accepted compensation under the N12 notice. The Tenant has also maintained an ongoing connection to the unit, including attending at the property to care for his children. There is insufficient evidence that the Tenant surrendered possession of the unit or returned the keys to the Landlords.
26. The evidence, when considered as a whole, demonstrates that the tenancy relationship remained between the Landlords and the Tenant, and was never transferred, assigned, or otherwise established with NK.
27. Based on the evidence before me, on a balance of probabilities, I find that NK is not a tenant within the meaning of the Act and was therefore not entitled to be served with the N12 notice, application, or notice of hearing. As such, I am not satisfied that NK was denied procedural fairness or that she was not reasonably able to participate in the proceeding. Accordingly, the request for review is denied.

It is ordered that:

1. The request to review order LTB-L-081371-25 issued on February 2, 2026 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on February 24, 2026 is cancelled. The stay of order LTB-L-081371-25 is lifted immediately.

April 7, 2026
Date Issued

Mayra Sawicki
Member, Landlord and Tenant Board

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