



Order under Section 69 Residential Tenancies Act, 2006

Citation: Valencia v Riley, 2026 ONLTB 30324

Date: 2026-04-16

File Number: LTB-L-035599-25

In the matter of: 2012, 20 BLUE JAYS WAY
TORONTO ON M5V3W6

Between: Blanca Valencia Landlord
Edgar Valencia

And

Maureen Riley Tenant

Blanca Valencia and Edgar Valencia (the 'Landlord') applied for an order to terminate the tenancy and evict Maureen Riley (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.

This application was heard by videoconference on January 13, 2026.

The Landlord's Legal Representative Jonathan Wang, the Landlord Edgar Valencia. The Tenant's Legal Representative Nivetha Vijayakanthan and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed. The parties were advised at the hearing of my decision. These are my reasons.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On April 15, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation their own use.
4. The Landlord has not proven that they 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.

Preliminary Issue

5. In advance of the prior hearing on July 17, 2025, the Tenant attempted to serve a summons on the intended occupant, Blanca Valencia. The Landlord had refused to accept service. The Landlord provided a medical note to state that Blanca Valencia was bedridden and not able to participate in these proceedings. The Tenants made further unsuccessful attempts to serve a summons. As a result, they requested that the application be dismissed.
6. The Landlord submitted that Blanca Valencia was present, in other words could be put on screen in this videoconference. However, due to the medications they were on, Blanca Valencia would not be able to participate in the proceedings. The medications make them drowsy, and the Doctor has recommended that they not be put in a position to answer questions. The intended occupant was put on the screen and was shown to be sleeping restfully. There was no attempt to wake them.
7. The request to dismiss the application was granted. On a balance of probabilities, I was not satisfied that the intended occupant had the capacity to participate in the proceedings, let alone be able to occupy the rental unit for their own residential occupation, particularly if they are bedridden.
8. If the intended occupant is on medication and is bedridden, to the point where they are unable to even participate in a legal proceeding brought on their behalf, I was not satisfied that they could even reside on their own in the rental unit. The N12 notice did not indicate that a person who provides care services will also reside in the rental unit.
9. At the prior hearing, where I had presided, the Landlord expressed a concern that the intended occupant had no capacity to understand the legal proceedings. They were advised that capacity would be assessed by the Board. They were also advised to submit an accommodation request if necessary.
10. The test for mental incapacity is a very high bar. Pursuant to section 6 of the *Substitute Decisions Act*, 1992, S.O. 1992, Ch. 30, a person is incapable of managing property if they are not able to understand the information that is relevant to making a decision in the management of their property, or not able to appreciate the reasonably foreseeable consequences of a decision. The tests for capacity to engage in litigation and to instruct counsel are similar.
11. Since the Landlord stated that the intended occupant did not have capacity, and the intended occupant was not able to be assessed by the Board due to the effect of the medications they were taking, the opportunity to inquire regarding capacity to ask a standard set of questions intended to determine capacity could not be undertaken.
12. The Ontario Court of Appeal in *Carmichael v. GlaxoSmithKline Inc.*, 2020 ONCA 447 (CanLII), at paragraph 94 sets out general factors to assess capacity.

[94] More recently, in Hengeveld, at para. 21, Hebner J. drew on Huang and other case law addressing when a person is under disability and requires a

litigation guardian, and listed the following potential indicators of the capacity to commence a proceeding under s. 7(1)(a) of the Act:

- (a) a person's ability to know or understand the minimum choices or decisions required to make them;
- (b) an appreciation of the consequences and effects of his or her choices or decisions;
- (c) an appreciation of the nature of the proceedings;
- (d) a person's ability to choose and keep counsel;
- (e) a person's ability to represent him or herself;
- (f) a person's ability to distinguish between the relevant and irrelevant issues; and,
- (g) a person's mistaken beliefs regarding the law or court procedures.

See Huang, at para. 19, citing C. (C.) v. Children's Aid Society of Toronto, [2007] O.J. No. 5613 (S.C.J.), at paras. 29-32; Calvert (Gen. Div.), at p. 298 O.R.; Kirby v. Leather, [1965] 2 All E.R. 441, [page634] [1965] 2 Q.B. 367 (C.A.), at p. 444 All E.R.; and Bilek v. Constitution Insurance, [1990] O.J. No. 3117, 49 C.P.C. (2d) 304 (Dis. Ct.).

13. The Landlord submitted a medical note at DOC-7129648 stating that the intended occupant was "bedridden" and unable to attend court. There were no other medical documents submitted to show capacity or lack thereof, and since the Landlord submitted that the intended occupant lacked capacity, I accepted those submissions.

14. As a result, the application shall be dismissed.

15. At the hearing, the parties did not provide submissions regarding how the Board should exercise its discretion regarding the compensation. Subsection 73.1(1) of the Act states:

73.1 (1) If the landlord compensated the tenant under section 48.1, 49.1, 52, 54 or 55, as the case may be, in connection with a notice of termination under section 48, 49 or 50 and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice, **the Board may order that the tenant pay back the compensation to the landlord.**

(emphasis added)

16. The application indicates that the Landlord gave the Tenant \$1,771.00 in compensation on March 27, 2025.

17. In the absence of submissions, I decline to order the compensation repaid.

It is ordered that:

1. The Landlord's application is dismissed.

April 16, 2026
Date Issued

Robert Patchett
Vice Chair, 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.