



**Order under Section 126
Residential Tenancies Act, 2006**

Citation: Rivera v Bevan et al, 2026 ONLTB 22167

Date: 2026-04-15

File Number: LTB-L-006341-23

In the matter of: 105 Tia Drive, Hamilton, Ontario, L8H 2N8

Between: Adriana Rivera and Landlord
1926804 Ontario Limited

And

Refer to attached Schedule 2 Tenants

Adriana Rivera and 1926804 Ontario Limited (the 'Landlord') applied for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex.

Order Preamble

This Application was filed with the Board on January 9, 2023, for an order permitting the rent charged to be increased by more than the guideline for one or more of the rental units in the residential complex by 1926804 Ontario Limited, (the 'Landlord'). The first effective date (FED) identified on the Application is April 1, 2023.

The Application does not apply to all rental units in the residential complex. For a list of the units covered by this Application, see Schedule 1.

The Application was resolved by a written hearing.

Preliminary Matters

The Act requires an Application for an Above Guideline Rent Increase to be filed with the Board at least 90 days prior to the FED identified on the Application. In this case, the FED was April 1, 2023. As noted above, this Application was received by the Board on January 9, 2023, which is less than 90 days prior to April 1, 2023.

When notified by the Board that the Application was filed beyond the time requirement in s. 126 of the Act, the Landlord filed an amended Application, changing the FED to May 1, 2023. In a letter accompanying the Amended Application, filed with the Board on April 14, 2025, the Landlord states "I am hoping that this satisfies the issues with the 90-day rule from the date of filing to the date of the increase."

I have accepted the Landlord's amended application filed with the Board on April 14, 2025.

On June 27, 2025, the Board Ordered the Landlord to serve a Notice of Written Hearing together with a copy of the Application on each Tenant affected by the Application.

The Landlord filed proof of service of the Notice of Case Management Hearing and Application on the Tenants. According to the Certificate of Service, which is dated July 2, 2025, the Notice of Hearing and Application were served on the Tenants of all units except units 102, 105, 110, 203, 304, 306, 307, and 309.

The Board received an e-mail on August 11, 2025, from the Tenant S-I. S. authorizing H.W. to act on behalf of the Tenants T.S. and S-I.S.

The Board conducted a virtual Case Management Hearing (CMH) on August 26, 2025. Following completion of the CMH, the Board directed that the merits of the Application be determined by way of a written hearing.

On August 27, 2025, counsel from the Hamilton Community Legal Clinic (HCLC) advised the Board it had been retained to represent the Tenant M.T. in this proceeding. The Board issued a Notice of Written Hearing on October 27, 2025. The Notice of Written Hearing set the following deadlines:

- a. The Landlord was required to serve a copy of the Notice of Written Hearing on the Tenants no later than November 16, 2025; and
- b. The Notice gave the Tenants until December 16, 2025, to make submissions in response to the Application, and provided the Landlord until December 31, 2025, to reply to any submissions filed by the Tenants.

The Landlord filed a Certificate of Service certifying that on November 11, 2025, the Notice of Written Hearing was served on all Tenants, except the Tenants of units 105, 110, 203, 304, 305, 306, and 307.

The Board received written submissions in response to the Application from the Tenant E.T.

The Board received written submissions from HCLC in response to the Application. Although counsel identifies himself as "Representative for the Tenants", counsel has not advised which of the Tenants in the complex, other than M.T., have retained HCLC to provide representation in this proceeding. In light of the fact that other Tenants have either filed submissions on their own behalf (Tenant E.T.) or expressly authorized another individual to represent them in this proceeding (Tenants T.S. and S-I.S.) the Board must conclude HCLC represents only the specific Tenant they initially identified as their client, the Tenant M.T.

No submissions were received by the Board from the person authorized to represent the Tenants T.S. and S-I. S.

The Board received written submissions in reply from counsel representing the Landlord.

It is determined that:

1. I find that the Landlord has justified a rent increase above the guideline because the Landlord incurred an eligible capital expenditure for the residential complex or one or more of the rental units in it.

THE DEFINITION OF CAPITAL EXPENDITURE

2. The Landlord must lead evidence to establish that each of the capital expenditures claimed meets the definition of "capital expenditure" as set out in s. 18(1) of the regulation. It says:

"capital expenditure" means an expenditure for an extraordinary or significant renovation, repair, replacement or new addition, the expected benefit of which extends for at least five years including,

- a. an expenditure with respect to a leased asset if the lease qualifies as determined under subsection (2), and
- b. an expenditure that the landlord is required to pay on work undertaken by a municipality, local board or public utility, other than work undertaken because of the landlord's failure to do it,

but does not include,

- c. routine or ordinary work undertaken on a regular basis or undertaken to maintain a capital asset in its operating state, such as cleaning and janitorial services, elevator servicing, general building maintenance, grounds-keeping and appliance repairs, or
- d. work that is substantially cosmetic in nature or is designed to enhance the level of prestige or luxury offered by a unit or residential complex;

"ELIGIBLE" CAPITAL EXPENDITURES

3. In addition to meeting the definition of capital expenditure, each of the Landlord's claimed items must be an "eligible" capital expenditure.
4. Subsections 126(7) and (8) of the Act say:

(7) Subject to subsections (8) and (9) and except under the prescribed

circumstances, a capital expenditure is an eligible capital expenditure for the purposes of this section if,

- a. it is necessary to protect or restore the physical integrity of the residential complex or part of it;
- b. it is necessary to comply with subsection 20 (1) or clauses 161 (a) to (e);
- c. it is necessary to maintain the provision of a plumbing, heating, mechanical, electrical, ventilation or air conditioning system;
- d. it provides access for persons with disabilities;
- e. it promotes energy or water conservation; or
- f. it maintains or improves the security of the residential complex or part of it.

(8) A capital expenditure to replace a system or thing is not an eligible capital expenditure for the purposes of this section if the system or thing that was replaced did not require major repair or replacement, unless the replacement of the system or thing promotes,

- g. access for persons with disabilities;
- h. energy or water conservation; or
- i. security of the residential complex or part of it.

THE 18-MONTH WINDOW

- 5. Pursuant to s. 26(2) of the regulation a rent increase shall not be ordered in respect of a capital expenditure unless the work was completed during the 18-month period ending 90 days before the effective date of the first intended rent increase referred to in the application. In this case the 18-month window is from July 31, 2021 to January 31, 2023.
- 6. The expenditure must also be "incurred" which essentially means the work must have been paid for prior to the application being filed. This is not an issue with respect to any of the items claimed in this application.

THE USEFUL LIFE

- 7. If the expenditure meets the requirements set out above, then the Board must establish the useful life of the work done in order to calculate the allowable increase.

8. Section 27 of the regulation says:

27. (1) The useful life of work done or a thing purchased shall be determined from the Schedule subject to the following rules:

- a. Where the useful life set out in Column 3 of the Tables in the Schedule is less than 10 years, the useful life of work done or a thing purchased shall be deemed to be 10 years.
- b. If, when a thing is purchased, it has previously been used, the useful life of the thing shall be determined taking into account the length of time of that previous use.
- c. If the work done or thing purchased does not appear in the Schedule, the useful life of the work or thing shall be determined with reference to items with similar characteristics that do appear in the Schedule.
- d. Despite paragraphs 2 and 3, for the purposes of making a finding under this section, the useful life of work done or a thing purchased shall not be determined to be less than 10 years.

(2) If the useful life of work done or a thing purchased cannot be determined under subsection (1) because the work or thing does not appear in the Schedule and no item with similar characteristics appears in the Schedule, the useful life of the work or thing shall be what is generally accepted as the useful life of such work or thing but in no case shall the useful life be determined to be less than 10 years.

Capital Expenditure

9. The Landlord justified a rent increase above the guideline because of capital expenditures.
10. The Landlord's evidence justifies a rent increase above the guideline of 10.28% because of capital expenditures. However, pursuant to subsection 126(11) of the Act, the maximum permitted rent increase above the guideline because of capital expenditures is 9.00% taken as follows: 3.00% in the first year, 3.00% in the second year and 3.00% in the third year. These increases are in addition to the annual guideline rent increase.
11. The Landlord's application is for the following capital expenditures:
 - a. Flat Roof Replacement
12. The Landlord states the work on the roof was completed on December 15, 2022, at a cost of \$350,300.00. The Landlord submits the roof replacement was necessary to protect the physical integrity of the residential complex because the existing roof was 19 years old and required replacement. Therefore, the

Landlord submits, the work represents an eligible capital expenditure under s. 126(7) of the Act.

13. Neither the representative of the Tenant M.T. or the Tenant E. T. dispute the Landlord's evidence concerning the work related to the replacement of the roof or the necessity of that work.
14. As noted in subsection 18(1) of O. Reg, 516/06, the roof of a structure forms part of the weather envelope of the structure and is integral to the physical integrity of the structure. Based on the uncontested submissions of the Landlord with respect to the age and the necessity of its replacement, I accept that the integrity of the roof had been compromised by age and therefore replacement of the roof was necessary.
15. Therefore, based on the Landlord's uncontested evidence and submissions, I accept that the installation of the new roof was required to protect the physical integrity of the building, and therefore constitutes an eligible capital expenditure under s. 126(7)(a) of the Act.
16. I accept the Landlord's unchallenged evidence that the total cost of this expenditure was \$350,300.00, and that the work was completed on December 15, 2022. I therefore find that the work was completed in the prescribed capital expenditure window and constitutes an eligible capital expenditure under s. 26(2) of O. Reg. 516/06.
17. The Landlord submits that the anticipated useful life of the new roof is 15 years. This is consistent with the useful life of similar roof projects on the Schedule titled "Useful Life of Work Done or Thing Purchased", which forms part of O. Reg. 516/06 (the "Useful Life Schedule"). Therefore, I find that the useful life of the Flat Roof Replacement is 15 years.

Written Submissions

18. Both Tenant E.T. and counsel for Tenant M.T. submit that the Landlord is not lawfully entitled to collect a rent increase above the guideline because they failed to give the Tenants proper notice of the rent increase sought in the Application. As a result, the Tenants E.T. and M.T. ask that the Board dismiss the Application.
19. In support of their request, counsel for the Tenant M.T. refers to the decision of the Board in TEL- 57659-15.¹ In that case, the Board determined that the Landlord had justified a rent increase of 1.9% above the guideline, but dismissed the Application on the grounds that the Landlord had not served a proper notice of rent increase for the increase sought in the Application.
20. The prior decision of the Board with respect to application TEL- 57659-15 does not bind the Board in this Application. Every Application must be determined

¹ 2017 CanLII 48950 (ON LTB)

based on the evidence and submissions presented by the parties in that proceeding. In this case, I find that the issue of whether the Landlord is entitled to collect the rent increase sought in this Application is not an issue properly before the Board in this proceeding.

21. This is a proceeding is under s. 126 of the Act, and the Board's jurisdiction is limited to the matters set out in s. 126 of the Act. There is nothing in s. 126 of the Act that confers upon the Board the power to determine whether the Landlord has served a proper notice of rent increase. My jurisdiction in this proceeding is limited to determining whether the Landlord has **justified** a rent increase above the guideline amount for the reasons set out in subsection 126(1) of the Act. Whether the Landlord is **lawfully entitled to collect** that rent increase, which is what the Tenants ask me to determine, is beyond the jurisdiction of the Board in this proceeding. As a result, the Tenants' request that the Application be dismissed is denied.
22. If the Tenants wish to challenge whether proper Notice of Rent Increase has been given, and whether the Landlord is lawfully entitled to collect the rent increase justified in this proceeding, the Tenants must do so in a separate Application brought under the Act. Nothing in this Order should be construed as a determination of whether the Landlord has given the Tenants proper Notice of Rent Increase in respect of the above guideline increase justified in this proceeding.

General

23. The Certificate of Service dated July 2, 2025, indicates that some rental units listed in the Application were not served with the Application. In addition, the Certificate of Service dated November 11, 2025, indicates that some rental units were not served with the Notice of Written Hearing. The LTB shall amend the Application by removing these rental units. As a result, this order for a rent increase above the guideline under section 126 of the Act does not apply to the following units: 102, 105, 110, 203, 304, 305, 306, 307, and 309.
24. For the purposes of s. 26(6) of O. Reg. 516/06, the weighted useful life for the capital expenditures allowed in this Order is 15 years.²
25. The first effective date of the rent increase above the guideline is May 1, 2023.
26. Since the Board is making this Order more than three months after the first effective date of set out in the Application, I have discretion under s. 205(2) of the Act to Order that the Tenants may pay to the Landlord any amount owing as a result of this Order in monthly instalments. In this case I believe it would be reasonable to allow the Tenants to pay the Landlord any monies owing as a result of this Order in 9 monthly installments.

² See Schedule 3 for an explanation of the significance of the weighted useful life of capital expenditures.

It is Ordered that:

1. The Landlord has justified a rent increase above the guideline of 9.00%.
2. Subject to the Landlord's compliance with the notice provisions set out in the Act, the percentage increase set out in paragraph 1 is to be taken as follows:
 - a. 3.00% within the time period of May 1, 2023, to April 30, 2024;
 - b. 3.00% within the time period of May 1, 2024, to April 30, 2025; and
 - c. 3.00% within the time period of May 1, 2025, to April 30, 2026.
3. The percentage increase set out in paragraph 1 may be taken in addition to the annual guideline in effect on the increase date for the unit.
4. The Landlord shall pay to the Tenants any sum of money that is owed as a result of this order within 60 days of the date of this order.
5. The Tenants may pay any amount owing to the Landlord as a result of this order in 9 monthly installments, beginning April 1, 2026.

April 15, 2026
Date Issued

James Gorham
Member, 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.

Important Notes:

1. The Landlord may increase the rent charged by the ordered increase within the time period specified if at least 12 months have passed since the last rent increase or since the tenant moved in, and if the landlord has given the Tenant at least 90 days proper Notice of Rent Increase.
2. If the Landlord has given a Notice of Rent Increase for a rent increase that is less than the ordered increase, the Landlord may only take the rent increase set out in the Notice.
3. If the Tenant's rent is increased pursuant to the percentage increase ordered for capital expenditures and the same Tenant remains in the unit after the expiration of the weighted useful life for capital expenditures, then the rent will be reduced.

Refer to Schedule 3 for information about the date and amount of the rent reduction.

4. The annual guideline for 2023 is 2.50%, for 2024 is 2.50%, for 2025 is 2.50% and for 2026 is 2.10%.

Schedule 1 - Units affected by this Order:

105 Tia Drive, Hamilton, Ontario, L8H 2N8

101
103
104
106
107
108
109
201
202
205
206
207
208
209
210
301
302
303
308
310

Schedule 2 - Tenants who are Affected by this Order:

Bevan, Tracy and Vanessa
Chinchilla, Urias
Cos, Jose
D'April, Enza
Garcia, Julio
Gaudet, Maurice and Samantha
Granilo, Kenan
Klapicic, Mario and Susan
Laking, Denis and Jackeline
Leal, Carolina and Renny Alexio
Mcbride, Karen
Mcbride, Scot
Morin, Dave
Page Bryan, Karen and Jean
Patel, Pershumar
Sullivan, Sherry and Thomas
Talsky, Eric
Theriault, Maurice and Elizabeth
Tucker, Neil
Vertichio, Katalyn

Schedule 3 - Rent Reduction related to Capital Expenditures

A. Date of Rent Reduction

If the Tenant's rent is increased based on capital expenditures during the period 2023 then:

The date of the rent reduction will be the day before:

- the date of the Tenant's first rent increase under this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in this order).

Example:

If the Tenant's rent was increased on June 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on May 31, 2031.

If the Tenant's rent was *not* increased based on capital expenditures during the period 2023 but was increased during the later periods set out in the order then:

The date of the rent reduction will be the day before:

- the First Effective Date of Rent Increase in this order, plus
- the number of years for the weighted useful life for capital expenditures for the unit (set out in this order).

Example:

If the first effective date of increase in this order is April 1, 2021 and the weighted useful life for capital expenditures is 10 years, then the rent will be reduced on March 31, 2031.

B. Amount of Rent Reduction

If the Tenant's rent is increased by the total percentage increase set out in this order then:

The rent must be reduced by the total percentage increase set out in this order for capital expenditures.

If the Tenant's rent is *not* increased by the total percentage increase set out in this order then:

The rent must be reduced by an amount determined in accordance with the prescribed rules which may be equal to or less than the total percentage increase set out in this order for capital expenditures.