



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

Citation: McHugh v Berrigan, 2026 ONLTB
30234 **Date:** 2026-04-24

File Number: LTB-L-087910-25-RV

In the matter of: 25 CARNEGIE ST
INGERSOLL ON N5C1K7

Between: Markus McHugh Landlord

And

Melinda Berrigan Tenants
James Berrigan

Review Order

Markus McHugh (the 'Landlord') applied for an order to terminate the tenancy and evict Melinda Berrigan and James Berrigan (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was resolved by order LTB-L-087910-25 issued on February 6, 2026. The hearing was held on January 8, 2026. As of 1:38 p.m., the Tenants were not present or represented.

On February 27, 2026, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 2, 2026, interim order LTB-L-087910-25-RV-IN was issued, staying the order issued on February 6, 2026.

This application was heard by videoconference on April 13, 2026. The Landlord's Representative, and the first-named Tenant attended the hearing.

Determinations:

Post-Hearing Submissions:

1. After the hearing concluded, the Landlord submitted unsolicited post-hearing submissions. No explanation was provided for why the submissions were not filed on time. In the absence of such reasoning, and in fairness to the Tenant, I have not considered any of the post-hearing submissions in my determinations.

Tenants' Request to Review

2. The hearing of the Landlord's L1 application was heard on January 8, 2026. Neither of the Tenants attended the hearing. The Board issued LTB-L-087910-25 issued on February 6, 2026, which provided a voidable termination and ordered the Tenants to pay to the Landlord \$8,186.00.
3. The Tenants filed a request to review order LTB-L-087910-25 issued February 6, 2026, stating that they were not reasonably able to attend the hearing, and that the order contained a serious error.

Not reasonably Able to Participate

4. With regard to not being able to participate, the Tenant says she did not have a mail key, so she did not get the Board's Notice of Hearing. She says she was given a copy of the mail key in January 2026, after the hearing date had come and gone.
5. The Board's records indicate that each Tenant was mailed a copy of the Notice of Hearing on December 2, 2025. The mail was not returned to the Board.
6. The Landlord denies that the Tenants were not provided with a mail key indicating the these were provided to the Tenants when they first took possession of the rental unit in September 2025.
7. In *King-Winton v. Doverhold Investments Ltd.*, [2008] O.J. No. 4697 (Ont. Div. Ct.), the Divisional Court stated that, "being reasonably able to participate in the proceeding must be interpreted broadly, natural justice requires no less".
8. However, in *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 541 (Div. Ct.), the Divisional Court also held that, "Lack of diligence in dealing with court proceedings is a reason for refusing to set aside an order where a party has failed to appear. In other words, it was not an error in law for the Review Board to find that lack of diligence constituted a reason not to grant the landlord a rehearing. If parties are not diligent in dealing with legal proceedings, then they cannot demand that a Tribunal waste its resources by rehearing matters a second time."
9. In my view, the Tenants did not exercise due diligence to ensure they were able to participate at the hearing. The Tenant asserts she did not get a mailbox key which was disputed by the Landlord, who stated the Tenants were provided with a key when the tenancy began. The Tenant did not provide any corroboratory documentary evidence, beyond her oral statement, which could have assisted the Board in determining the veracity of her statement.
10. Further, the Tenant did not deny receiving a copy of the N4 notice or a copy of the Landlord's application. This should have impressed upon her that if she did not receive a Notice of Hearing, she ought to contact the LTB to inquire about whether a hearing was scheduled. Additionally, there was no evidence to support that the Tenants ever contacted the Landlord to get a mail key given that they say they did not have one

11. The Divisional Court found in *Kizemchuk v 60 Montclair Limited*, 2024 ONSC 6140, found at par. 40:

“...there is a difference between being prevented from attending and failing to make reasonable efforts to attend. A party must demonstrate that they exercised diligence in their effort to attend the original hearing. If a party is not diligent in dealing with legal proceedings, they cannot expect the Board to hold a second hearing: *Q Res IV Operating GP Inc. v. Berezovs'ka*, 2017 ONSC 5541 at para. 8.”

12. As such, I do not find there was a serious error because the Tenants were not able to participate at the January 8, 2026, hearing, and their request is denied.

Serious Error

4. In addition, the Tenant disputes the rent arrears claimed. As such, she submits the Board's order contains a serious error because it does not accurately reflect the arrears. That is because she says she paid \$4,000.00 in advance of beginning the tenancy, and that this was not accounted for in the Board's order.
5. When I look at the L1/L9 update which was provided in advance of the prior hearing, I see that the Tenants were credited with \$4,000.00 in payments: two payments made in August 2025, totalling \$3,500.00, and then an additional payment on January 1, 2026, of \$500.00. I note this does not accord with the timing the Tenant stated, that is she says all three payments were made before the tenancy began in September 2025.
6. The Tenant stated she had sent these to the Board, but these were not reflected in the Tribunals Ontario Portal ('portal'). Upon review in the portal, I noted that the Tenant had sent an e-mail to the Board which was received on April 7, 2026. However, no documentary evidence was attached to that submission. Additionally, a further document was received after the conclusion of the hearing. Again, there were no bank records contained in the submission.
7. The Board requested these documents, specifically bank records, which could demonstrate that additional payments were made. The matter was held down for the Tenant to gather and provide this evidence.
8. Approximately two hours later, the Board resumed the matter. However, during this time the Tenant was unable to either locate or send the supporting documents to the Board. At this time, the Tenant was being assisted by a family member, and I attempted to go through each of the documents the Tenant states she had sent into the Board. This approach did not prove to be helpful; however, as the family member did not have her glasses so she could identify the documents, the few documents we were able to review were not relevant to the proceedings, and the Tenant either spoke over her family member, spoke over myself, or failed to respond to the questions being asked.
9. Given the lack of corroboratory documents, I am not persuaded that the Tenants made the payments the Tenant stated. The amount paid before the tenancy began is close to what the Tenant believed she had paid. That is, she believed she paid \$4,000.00 before the tenancy began, while the Landlord's records show she paid only \$3,500.00. However, as

she since paid an additional \$500.00 in January 2026, and this matches what the Tenant states was paid, I find that it is more likely than not that the Landlord accurately reflected the payments and arrears in the first L1/L9 update sheet. As such, I am not persuaded that the order contains a serious error. Thus, the request to review must be denied.

Lifting the Stay

10. The Tenant's submissions focused heavily on the fact that she believes the Landlord reported her or some other individuals who were residing as roommates in the rental property to Ontario Works. Therefore, she submits that but for the Landlord's interference, she would not be in the predicament she is currently in. Further, she says both her and her husband are suffering from cancer although no corroboratory evidence was provided to support this claim such as doctor's letters, or treatment protocols.
11. The Landlord denies the allegation pertaining to the individuals who were the Tenants' roommates, stating that they themselves chose to move out of the rental unit. They also submit this is the first instance of hearing about any medical issues affecting the Tenants.
12. Regardless, when I consider all of the circumstances, I am persuaded a short delay in termination to May 15, 2026, is appropriate. The tenancy is not particularly long-term, and the arrears began almost immediately after the tenancy began. No further repayments have been received. The arrears are now over \$13,000.00, and the Tenants have had the benefit of three months already since the original order issued.
13. However, a brief delay to May 15, 2026, gives the Tenants an opportunity to seek alternative accommodations.
14. Of note, the Tenant logged off from the hearing before the hearing concluded and did not return. As such, the Tenant was not present during final submissions of the Landlord.

It is ordered that:

1. The request to review order LTB-L-087910-25 issued on February 6, 2026, is denied. The order is confirmed and remains unchanged.
2. The interim order issued on March 2, 2026, is cancelled. The stay of order LTB-L-087910-25 is lifted May 15, 2026.

April 24, 2026
Date Issued

Jane Dean
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.