



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

Citation: Cardinale v Hernandez, 2026 ONLTB 38231

Date: 2026-05-13

File Number: LTB-L-058933-25-RV3

In the matter of: 16 SOUTHBURY MANOR DR
BOLTON ON L7E1X6

Between: Monique Cardinale Landlord

And

Zurilay Hernandez Tenants
Alvaro Aguilar Ponce

Review Order

Monique Cardinale (the 'Landlord') applied for an order requiring Zurilay Hernandez and Alvaro Aguilar Ponce (the 'Tenants') to pay the rent that the Tenants owe.

This application was resolved by order LTB-L-058933-25 issued on October 1, 2025 and amended on January 16, 2026.

On January 26, 2026, the Tenant, Zurilay Hernandez, requested a review of the order and that the order be stayed until the request to review the order is resolved. They allege that they were not reasonably able to participate in the hearing that took place on September 22, 2025.

On February 4, 2026 interim order LTB-L-058933-25-RV-IN was issued, staying the order issued on October 1, 2026 and amended on January 16, 2026

This review was heard by videoconference on March 3, 2026.

The Landlord and both named Tenants attended the hearing.

Determinations:

1. The Tenant, Zurilay Hernandez (ZH), requests a review on the basis that they state they did not receive notice of the hearing for September 22, 2025 because they vacated the rental unit in late May of 2024 and were not made aware of the hearing. They submit that they only became aware of the order issued on October 1, 2025 after receiving an email copy from the Landlord on November 7, 2025. On this basis, they claim that they were not reasonably able to participate in the hearing because they had no knowledge of it.

2. ZH further submits that the order contained a serious error on the basis that the Board ordered rent arrears against them more than one year after they vacated the rental unit. They argue that this is an error pursuant to subsection 87(1.1(b) of the *Residential Tenancies Act, 2006* (the 'Act').
3. For the reasons that follow, the Tenants request for review is denied on both grounds.
4. There is no dispute that the other named Tenant, Alvaro Aguilar Ponce (AAP), received the notice of hearing for September 22, 2025 because they were present and attended the hearing and made submission and gave evidence on that date.
5. There is no dispute that one of the two named Tenants, AAP, were in possession of the rental unit on the date the Landlord's L9 application was filed on July 19, 2025. They vacated the rental unit on or about July 31, 2025 and returned possession of the rental unit to the Landlord at that time.
6. There is no dispute that this was a joint tenancy and that a tenancy agreement was entered into on September 28, 2023 between the Landlord and both named Tenants and both were held liable jointly and severally under the agreement. It was originally a periodic one-year tenancy from December 1, 2023 to November 30, 2024. There was no evidence that the parties signed another tenancy agreement for another year term. On this basis, I accept that the joint tenancy became a monthly tenancy starting on December 1, 2024.
7. I do not find that the Landlord agreed to sever the tenancy by serving an N4 Notice only naming AAP as the sole tenant. I accept that this was an oversight at the time the notice was given in April of 2025 because the Landlord's sister drafted the form by only reading the first Tenants name. I have no reason to doubt the Landlords evidence on this point considering the history of proceedings between the parties. Alternatively, the Tenant submitted that the Landlord did agree to sever the tenancy, however they provided insufficient evidence, like dates or specific communications that this may have occurred. On this basis I prefer the evidence of the Landlord that there was no agreement to sever the tenancy.
8. Pursuant to subsection 191(1.0.1) of the Act, a document is sufficiently given by sending it by mail to the address where the tenant or former tenant resides.
9. According to the Board's records, the Notice of Hearing and application copy were mailed to both Tenants separately to the rental unit address on July 28, 2025. Only the Notice of Hearing and application copy for the Tenant, AAP, was returned as undeliverable on August 28, 2025 and yet they attended the hearing on September 22, 2025 and gave evidence and made submissions regarding the rent arrears on this date. In fact, they did not dispute the arrears owing.
10. Pursuant to subsection 37(1) of the Act, a tenancy may be terminated only in accordance with this Act.
11. Pursuant to subsection 38(3) of the Act, If the period of a periodic tenancy ends, and the tenancy has not been renewed or terminated and subsection (2) does not apply, the landlord and tenant shall be deemed to have renewed it as a monthly tenancy, with the same terms and conditions that are in the expired tenancy agreement and subject to any increases in rent charged in accordance with this Act.

12. In the case of one remaining tenant still in possession of the rental unit, as is the case before me, only one of the joint tenants to the tenancy agreement need be served with the Notice of Hearing and the application copy as they are joint tenants under a single lease. Both are jointly and severally liable.
13. On this basis, I am unable to find that ZH was not reasonably able to participate in the proceedings or that the order contains a serious error on the basis that they were not reasonably able to participate in the hearing.
14. With respect to the second ground of the review regarding the one-year limitation with respect to subsection 87(1.1)(b), this must also fail for the following reasons.
15. On September 1, 2021 the Act was amended to include an application in which a landlord can apply against a tenant and a tenant no longer in possession (Former Tenant) to claim rent arrears (87(1)), compensation for substantial interference (88.1(1)), compensation for failure to pay utilities (88.2(1)), and for compensation for damages to the rental unit or residential complex (89(1)). The application is an L10 application, and it applies specifically to a landlords application against a Former Tenant no longer in possession of the rental unit. Prior to the amendments, the Board lacked the jurisdiction to consider an order against a tenant no longer in possession of a rental unit. That is no longer the case.
16. In my view, any of the provisions relating to these sections restricting the timing of the application to a one-year period after the tenant or former tenant ceased to be in possession of the rental unit, for instance subsection 87(1.1)(b), do not apply in this case because the Tenants were still in possession of the rental unit due to the nature of their joint tenancy. AAP in fact was still occupying the rental unit on the date the application was filed.
17. To interpret these provisions like the Tenant suggests would create an absurd result. What the Tenant is suggesting is that a landlord should be prohibited from applying to the Board to seek relief if one of the joint tenants vacates the rental unit more than one year prior to the landlord's filing of the application. The Act specifically permits a landlord to file an application up to one year after obtaining vacant possession of the rental unit.
18. The Landlord filed their application pursuant to section 87(1) of the Act. Subsection 87(1.1) states that an application may be made (a) while the tenant is in possession of the rental unit; or (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit.
19. The deliberate use of the word "or" in these sections, in my view, is intended to provide in which circumstance either the Board is required to serve the responding party the Notice of Hearing and the application copy, or whether it is the landlord that serves them the hearing package.
20. Subsection 189.0.1(1) of the Act states that, if, at the time the application is made, the tenant or former tenant who is a party to the application is no longer in possession of the rental unit, then in accordance with subsection 189.0.1(2), the applicant is required to give the tenant or former tenant a copy of the application and a copy of any notice of hearing issued by the Board in respect of the application in accordance with the Rules.

21. In accordance with Rule 5.8, a landlord's application to Collect Money a Former Tenant Owes must be given to the Former Tenant no longer in possession at least 30 days before the hearing date set out in the Notice of Hearing. Meaning that the Landlord must serve them, being the Former Tenants, a copy of the Notice of Hearing and Application if "**at the time the application is made, the tenant or former tenant who is a party to the application is no longer in possession of the rental unit**" (my emphasis added). In the case before me, the tenant, ACC, remained in the unit and it is sufficient to serve the remaining joint tenant with the required documents. It is not the Landlords fault that AAP did not notify ZH of the hearing if that was in fact the case. The Act does not require each party to be served independently when one tenant remains in possession of the rental unit and the other vacates.
22. What was most apparent at this review hearing was that the real reason that ZH is disputing the application is for the only reason that they are named as a respondent Tenant and don't believe they should be responsible for the rent arrears after they vacated the unit more than a year prior. This is because they have employable income that can be garnished where the other Tenant is receiving government benefits that cannot be garnished. There is no dispute regarding the quantum of money ordered to be paid by the Tenants.
23. Even if I were satisfied that ZH was not reasonably able to participate in the hearing on September 22, 2025, it would not ultimately change the result in the order. Both Tenants are jointly and severally liable under the terms of their tenancy agreement with the Landlord. One Tenant cannot unilaterally remove themselves from liability by simply vacating the rental unit. The Landlord clearly does not agree to this change and did not agree to terminate the tenancy of one of the joint tenants.
24. For these reasons, the Tenants request for review must be denied and the order issued on October 1, 2025 and as amended on January 16, 2026 remain unchanged.

It is ordered that:

1. The request to review order LTB-L-058933-25 issued on October 1, 2025 and as amended on January 16, 2026 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on February 4, 2026 is cancelled. The stay of order LTB-L-058933-25 is lifted immediately.

May 13, 2026
Date Issued

Terri van Huisstede
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.