



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

Citation: Monterey Park Inc. v Aguilera, 2026 ONLTB 37119

Date: 2026-05-13

File Number: LTB-L-104135-25-RV

In the matter of: 6, 25 ROMFIELD CIRCT
THORNHILL ON L3T3H4

Between: Monterey Park Inc. Landlord

And

Julien Aguilera Tenants
Claudio Valle-Garay

Review Order

Monterey Park Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Julien Aguilera and Claudio Valle-Garay (the 'Tenants') and for an order to have the Tenants pay compensation they owe because the Tenants failed to meet a condition specified in the order issued by the Board on April 24, 2025 with respect to application LTB-L-003321-25-SA.

This application was resolved by ex parte order LTB-L-104135-25 issued on January 5, 2026.

The Tenants filed a motion to set aside the order.

The motion was resolved by order LTB-L-104135-25-SA issued on March 18, 2026.

On April 21, 2026, the Tenant requested a review of order LTB-L-104135-25-SA.

The request to review was heard by videoconference on May 1, 2026.

The Landlord's agent, Morris Rosen, the Landlord's legal representative, Ashley Cassidy, Julian Aguilera (the 'Tenant') on behalf of both Tenants, and the Tenant's representative/brother, Alexander Aguilera, attended the hearing.

Determinations:**Review**

1. I am persuaded that the order contains a serious error.
2. Subsection 78(11)(b) requires the Board to set aside an ex parte order if the Board is satisfied, **having regard to all the circumstances**, that it would not be unfair to set aside the ex parte order (emphasis added).
3. I find that the order contains a serious error because it did not consider “all the circumstances” in its section 78(11)(b) analysis.
4. In this regard, I adopt the reasoning set out in *TSL-93456-18-SA (Re)*, 2018 CanLII 120874 (ON LTB) which states:

I am of the opinion that subsection 78(11)(b) of the Act requires a broad interpretation of “all the circumstances”. In *Chieu v. Canada (Minister of Citizenship and Immigration)*, 2002 SCC 3 (CanLII), [2002] 1 S.C.R. 84, a case concerning the exercise of discretion not to remove a permanent resident from Canada, the Supreme Court considered the ordinary and grammatical meaning of “all the circumstances of the case” and noted at paragraphs 29 and 30:

“An ordinary reading of “all the circumstances of the case” leads to a broad interpretation of s.70(1)(b). The first consideration is that these words appear in a provision establishing a discretionary or equitable jurisdiction. The words do not provide detailed guidelines as to how this discretionary jurisdiction is to be exercised, but instead leave the scope of the discretion open-ended.

The second factor favouring a broad reading of s. 70(1)(b) is the grammatical sense of the phrase “all the circumstances of the case”. The word “all” is defined by the Concise Oxford Dictionary (8th ed. 1990), at p. 29, as “entire number of” or “greatest possible”. In this context, it would therefore mean considering the greatest possible number of factors relevant to the removal of a permanent resident from Canada. It is evident that one such factor is the conditions an individual would face upon removal.”

Moreover, I am directed by *Matthews v. Algoma Timberlakes Corp.*, 2010 ONCA 468 (CanLII), [2010] O.J. No. 2710 (C.A.) to interpret the Act, which is a remedial statute, in a broad and purposive fashion.

4. The order does not consider all the circumstances in its section 78(11)(b) analysis. Missing from the analysis are the following:
 - the Tenants had complied with the requirement set out in order LTB-L-003321-25-SA to pay the rent in full and on time from May 1, 2025 to November 1, 2025
 - the breach of order LTB-L-003321-25-SA was a singular late payment rather than multiple late payments
 - subsequent to the singular breach on December 1, 2025, the Tenants paid the rent in full and on time from January 1, 2026 to March 1, 2026

- after becoming aware of the December 1, 2025 breach, the Tenants rectified the breach and made the Landlord whole on December 13, 2025
 - the effect of the breach on the Landlord
5. Since order LTB-L-104135-25-SA did not consider all the circumstances, I cancelled the order and proceeded to hear anew the motion to set aside order LTB-L-104135-25 issued on January 5, 2026.

Motion to Set Aside

6. The parties agreed that a breach of order LTB-L-003321-25-SA occurred on December 1, 2025. The parties also agreed that the findings of fact identified in order LTB-L-104135-25-SA relating to the nature of the breach and the nature of the tenancy were largely correct with the exceptions made by the Tenant that the Tenant's mother does not live in the rental unit and the Tenant's accidental use of the bankcard occurred in November 2025, not December 2025.
7. The parties also agreed that the only issue to be determined with respect to the motion was whether, having regard to all the circumstances, it would not be unfair to set aside the ex parte order.
8. I am satisfied, having regard to all the circumstances, that it would not be unfair to set aside the ex parte order.
9. I am mindful of the history of the proceedings between the parties. The parties entered into consent order LTB-L-043571-23 and LTB-L-082444-23 issued February 13, 2024 requiring the Tenants to pay the rent in full and on time from March 1, 2024 to February 1, 2025. The Tenants breached this order by missing the payment due on January 1, 2025. The Landlord initiated application LTB-L-003321-25 because of this singular breach which ultimately resulted in the above-noted order LTB-L-003321-25-SA which extended the requirement to pay the rent in full and on time from May 1, 2025 to April 30, 2026.
10. While I recognize that order LTB-L-003321-25-SA granted the Tenants relief from eviction for the breach that occurred on January 1, 2025 and that the December 1, 2025 breach is a secondary breach, I also recognize that the Tenants have ultimately only paid the rent late twice between entering into the consent order in February 2024 and March 2026. I also recognize that while the January 1, 2025 breach resulted from the delinquency of one of the Tenants, the December 1, 2025 breach appears to have resulted by simple accident (i.e. accidental use of wrong bankcard resulting in shortfall of funds for automatic payment), not because of an inability to pay or lack of diligence in setting up payment arrangements. As a result, while the secondary breach speaks in favour of denying the motion, I do not find it to be determinative given the broader view of the larger proceedings and the nature of the secondary breach.
11. The Landlord's agent provided general testimony with respect to the nuisance resulting from late payment of rent (e.g. chasing tenants down, serving N4s, filing applications) and the Landlord's need for funds to make mortgage payments, pay for maintenance, pay superintendent wages, and make investments in the property, however, the Landlord's agent stated that the residential complex contains 35 townhomes and did not identify any

specific harm resulting from the two late payments with respect to this tenancy that occurred since February 2024. As a result, while I acknowledge some level of harm to the Landlord from the late payments, I find it to be minimal.

12. I am also mindful of the Landlord agent's testimony regarding the expense of legal proceedings, however, I am not persuaded by this argument because the decision to initiate and pursue legal proceedings is voluntary and should be thoughtfully considered. While the Landlord was within their rights to file this application on December 11, 2025, having not received the payment on December 1, 2025, pursuing the application after they had received the missing payment, in light of the circumstances of this tenancy (see below), was imprudent. As a result, while I acknowledge the Landlord's legal expenses, I do not find they speak in favour of denying the motion.
13. The Landlord also argued that the motion should be denied because the Landlord would be less likely to enter into consent section 78 orders in the future if it was not. I did not find this argument to be persuasive. Section 78(9) is integral to, and goes hand-in-hand with, section 78(1) to ensure fairness and balance the interests of the parties, the one cannot exist without the other.
14. The Tenant testified that he has lived in the rental unit for 28 years since he was three years old. He said that this is the only home he has ever known and where he has experienced all his major life events. His aged, disabled mother, who used to reside in the rental unit, comes by daily as part of her daily routine. His niece attends school across the street from the rental unit, visits frequently, and uses the rental unit as a safe place whenever she is overwhelmed at school.
15. The Tenant also testified that he no longer carries with him the bankcard belonging to the account from which rent payments are made so that there will be no future recurrence of the accident that led to the breach on December 1, 2025. The Tenant also testified that he did not initially pay the rent for April 2026 because of order LTB-L-104135-25-SA issued on March 18, 2026 and the existence of a last month's rent deposit, but that he did pay April's rent when the order was stayed pending review. The Tenant states that he also paid May 2026 rent.
16. Given the minimal impact the breach had on the Landlord, the significant impact eviction would have on the Tenant and his family, the nature of the breach, and the steps the Tenant has taken to ensure rent will be paid on time in the future, I find that it would not be unfair to set aside the ex parte order.
17. As a result, the motion is granted and order LTB-L-104135-25 issued on January 5, 2026 is set aside.
18. Although the Landlord requested, in the event that the motion was granted, that a new order issue pursuant to subsection 78(12) requiring the Tenants to pay the rent in full and on time for another year, I do not find it appropriate to do so in the circumstances of this case as I am satisfied that the Tenant has taken appropriate steps to ensure the rent is paid on time in the future.

It is ordered that:

1. The request to review order LTB-L-104135-25-SA issued on March 18, 2026 is granted and the order is cancelled.
2. The motion to set aside order LTB-L-104135-25 issued on January 5, 2026 is granted and the order is set aside.
3. The Landlord's application is dismissed.

May 13, 2026
Date Issued

Richard Ferriss
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.