



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

Citation: The Bank of Montreal v Photiades, 2026 ONLTB 41804

Date: 2026-06-02

File Number: LTB-L-091623-25-RV2

In the matter of: 1105, 220 GEORGE ST
TORONTO ON M5A2N1

Between: The Bank of Montreal Landlord
Gowling WLG (Canada) LLP

And

John Photiades Tenant

Review Order

The Bank of Montreal and Gowling WLG (Canada) LLP (the 'Landlord') applied for an order to terminate the tenancy and evict John Photiades (the 'Tenant') and for an order to have the Tenant pay the rent they owe because the Tenant failed to meet a condition specified in the order issued by the LTB on October 21, 2025, with respect to application LTB-L-063383-25.

The Landlord's application was resolved by order LTB-L-091623-25, issued on November 5, 2025. This order was issued without a hearing being held.

On November 8, 2025, the Tenant filed a motion to set aside order LTB-L-091623-25.

The Tenant's motion to set aside the eviction order was resolved by order LTB-L-091623-25-SA on March 2, 2026.

On March 20, 2026, the Tenant requested a review of the set-aside motion order and that the order be stayed until the request to review the set-aside motion order is resolved.

On March 23, 2026 interim order LTB-L-091623-25-RV-IN was issued, staying the order issued on March 2, 2026.

The request to review was heard by videoconference on April 30, 2026. As discussed below, the review request was granted and the de novo hearing of the set-aside motion was adjourned to be heard at a later date.

The de novo motion was heard by videoconference on May 25, 2026.

In attendance at the hearing were the Landlord's representative Sanjin Kovacevic, the Tenant and the Tenant's representative Debbesha Morris.

Determinations:

The Review Granted

1. The Tenant submits there was a serious error in the Board's order LTB-L-091623-25-SA because the order misapplied the doctrine of re judicata, failed to consider section 83 of the *Residential Tenancies Act, 2006* (the 'Act'), and the Member failed to give the Tenant an opportunity to make submissions about relief from eviction.
2. The review was granted, but not for the reasons the Tenant submits. Section 78 does not engage section 83 of the Act. However, a motion pursuant to section 78 of the Act is about an alleged breach of the original order, not a re-hearing of the original matter. The Member in their analysis failed to embark on the correct enquiry under section 78. The Member failed to ask the following necessary questions:
 1. Did the Tenant breach the order?
 2. Would it be unfair in the circumstances to set aside the eviction order, considering if there was a reasonably foreseeable reason that interfered with the Tenant's ability to comply with the order?
 3. If it is unfair, when should the stay be lifted?
3. Instead of engaging in the proper analysis under section 78, the Member applied the doctrine of res-judicata which was not relevant to the application before the Board and engaged in a 78(11) analysis.
4. Therefore, on the basis of the submissions made in the request, I was satisfied that there is a serious error in the order or that a serious error occurred in the proceedings and granted the Tenant's review request.
5. The de novo hearing of the set-aside motion was adjourned to May 25, 2026.

Motion to Set-Aside Denied

The Breach

6. There is no real dispute that the Tenant failed to meet a condition specified in the order issued by the LTB on October 21, 2025, with respect to application LTB-L-063383-25. The Tenant failed to pay the \$8,000.00 awful monthly rent on or before October 14, 2025.

Motion to Set Aside

7. As I am satisfied that the Tenant breached the order, the next issue before me is whether it would be unfair in all the circumstances to grant the Tenant's motion and set aside the eviction order.
8. After considering all of the relevant circumstances, I find it would be unfair to set aside exparte order LTB-L-091623-25.

9. The Tenant has paid no rent to the Landlord since the order was issued on October 21, 2025. None of the outstanding arrears have been paid either. The Tenant failed to follow that consent order because he disagrees with it. The Tenant submits the “unforeseen circumstance” of his representative’s inadequate representation at the hearing, leading to a consent that he did not agree with caused him to not pay the rent. He believes he pre-paid rent for several years and doesn’t have to pay any rent until at least December 1, 2027. I find, however, that this was not an unforeseen circumstance occurring after the order, but rather a dispute with his representative about how the hearing was managed, which could be the subject of a law society compliant, or a review request, but not a reason to simply fail to follow the order.
10. Guideline 7 of the Board’s Interpretation Guidelines states that in their consideration of section 78(11)(b) the Members should take into account circumstances that occurred after the date of the mediated agreement or conditional order that cause the party to be unable to meet the terms of the agreement or order. In essence, a consideration of ‘all the circumstances’ does not open the door to an alternate review process of the original order.
11. This motion was filed as a collateral attack upon the underlying original order, not a motion to present evidence as to circumstances preventing the Tenant from paying the rent, such as new loss of job, or sudden health issues. The Tenant has filed this motion to do indirectly what he could not succeed with directly. Two previous review requests by the Tenant regarding LTB-L-063383-25 were denied, one on November 10, 2025 and one on December 5, 2025.
12. Regardless of the reason for the Tenant’s disagreement with the original order, a motion to set-aside is not an opportunity to revisit the original order. In the original consent order the Tenant agreed he owed arrears and monthly rent, even if he disputes that the consent was not voluntary. That order was twice upheld on review. He didn’t pay, in accordance with that order and therefore there was a breach.
13. I have therefore not considered the evidence led by the Tenant regarding the circumstances around his instructions to his previous representative or the evidence regarding historical rent and payments to various mortgage lenders in 2023 and 2024. They are irrelevant to my determinations under this motion to set aside.
14. Many of those documents are hearsay in any event, including the affidavit from the Tenant’s prior counsel, and I note their acceptance into evidence would be highly prejudicial. The Landlord is unable to cross-examine any of the people who made those documents, and the Tenant made no effort to subpoena any of those people. Because those documents are not relevant to this motion, the probative value of those documents would outweigh their prejudicial effect.
15. Based on financial information provided by the Tenant during the hearing, he has more than sufficient income to pay the monthly rent and the arrears. This confirms for me that no financial limitations arose after the order was issued which have prohibited the Tenant from paying rent and arrears.
16. The Landlord’s representative submits that the Landlord, who is the Bank of Montreal, and has an assignment of rents, but has received no rent. Given the Tenant’s refusal to comply with the Board’s order, even on a good faith basis, it would be unfair to set aside the

eviction order. Arrears are now at \$96,000.00, which are well above the Board's statutory limitation and are double the amount the Tenant was ordered to pay in October of 2025.

17. I note that the Tenant exhausted the Board's review process both in this matter and the original L1 application file. If he wants to challenge the original order further, he must do so in a different forum.

Lifting the Stay

18. As I am denying the Tenant's motion, the next issue before me is when to lift the stay of the eviction order.
19. In this regard I have considered that the Tenant has lived in the rental unit since late 2023, just over two and a half years. In the last year, no rent has been paid and arrears are extraordinarily high. He provided no evidence that he shares his rental unit with anyone else. He works from home in the financial sector and is self-employed. In my view the impact if the Tenant had to move to another area of the city is therefore less than if he were tied to a location close to his place of work.
20. The Tenant suggested he would be homeless if evicted immediately. He asks for at least two months. While I agree he would have to quickly seek to find another apartment to live in, he has sufficient funds that he could afford short-term accommodations and moving expenses.
21. I've taken into account that the order for the eviction was issued on November 5, 2025 and the stay was previously lifted by the previous set-aside order on March 2, 2026, which means the Tenant has had at 6 months at most and two months at least to begin looking for another place to live. The Tenant has made no effort to date to begin searching.
22. I have considered the Tenant has sufficient income to pay well above market rent. The Tenant submits that he has bad credit and will have trouble finding alternate accommodation due to his self-employment status, however, he presented no evidence in that regard, and any difficulty is speculation. I have considered that while the Tenant carries modest debt, there was no indication it would interfere with his available income or his ability to find another place to live.
23. The Tenant proposed that if ordered, he could pay \$30,000 towards arrears per month starting in June. This suggest that the Tenant has sufficient funds readily available for rent elsewhere.
24. Arrears are now at \$96,000.00. The Landlord would suffer extreme prejudice if the stay was extended and has requested the stay be lifted immediately. I agree that it would be unfair in the circumstances to extend lifting of the stay.

It is ordered that:

1. The request to review order LTB-L-091623-25-SA issued on March 2, 2026 is granted.
2. The motion to set aside Order LTB-L-091623-25, issued on November 5, 2025, is denied.
3. The stay of order LTB-L-091623-25 is lifted immediately.

June 2, 2026
Date Issued

Julie Broderick
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.