



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

Citation: Starecky v McGinley Bros Inc, 2026 ONLTB 40461

Date: 2026-06-03

File Number: LTB-T-024780-25-RV

In the matter of: MAIN FLOOR, 18 AUSTIN TERR
TORONTO ON M5R1X9

Between: Nicholas Starecky Tenant
Jessica Starecky

And

McGinley Bros Inc Landlord

Review Order

Nicholas Starecky and Jessica Starecky (the 'Tenants') applied for an order determining that McGinley Bros Inc (the 'Landlord') was required to allow the Tenants to move back into the unit under section 53 of the *Residential Tenancies Act, 2006* (the 'RTA') and failed to do so.

The application was heard on January 28, 2026 and resolved—granted—by an order issued on March 20, 2026 (the 'Hearing Order').

The Landlord asked the LTB to review the Hearing Order. In an interim order issued on March 31, 2026 (the 'Interim Order') that request was directed to a hearing and the Hearing Order was stayed.

I heard the review by videoconference on May 20, 2026. The Landlord and the Tenants attended the hearing. Nikkie Sheppard represented the Landlord. Joseph Behar represented the Tenants.

I heard from the parties and considered the written submission made by the Landlord. **[DOC-7952611]** I did not consider the video files uploaded to TOP by the Landlord depicting the current state of the unit because the parties agree that the unit would not be ready for (re)occupation by July 1, 2026.

Determinations:

I. Introduction

1. The residential unit is the main floor of a duplex. The Landlord obtained approval to expand into a fourplex.
2. The Landlord delivered an N13 notice of termination dated August 27, 2024 with a December 31 2024 termination date. **[DOC-5300449]** The N13 indicated that the unit was

being demolished did not, as a result, provide the Tenants with right to move back into the unit, as would have been the case had the Landlord taken the position it was renovating the unit.

3. The Tenants vacated the rental unit voluntarily on October 31, 2024 and later commenced this application.
4. After hearing from the parties on January 28, 2026, the Member found that:
 - (a) work to be undertaken by the Landlord as described on the N13 was a 'renovation' and not a 'demolition' such that the Tenants were entitled to an order directing that the Landlord permit them to reoccupy the unit on or before July 1, 2026;
 - (b) the work undertaken by the Landlord in October of 2024 was such that the Tenants were deprived of 100% of the benefit of the unit such that a 100% rent abatement for October of 2024 was appropriate; and
 - (c) the Tenant were entitled to \$10,000.00 in 'general' compensation.
5. In asking the LTB to review the Hearing Order, the Landlord asserted:
 - (a) it was a serious error for the Member to grant a rent abatement for October of 2024;
 - (b) it was a serious error for the Member to grant 'general' compensation of \$10,000.00; and
 - (c) it was a serious error for the Member to order that the Landlord permit the Tenants to (re)occupy the unit by July 1, 2026.
6. The review of an LTB hearing order is a two-stage process.
7. The first stage of the process is a preliminary analysis of the request to review the hearing order. At this stage a Member determines whether, based only on the written request made by the party seeking to have the hearing order reviewed, the request has sufficient merit to proceed to a review hearing. At this stage, Member decides only whether the hearing order **may** contain a serious error or whether the requester **may not** have been reasonably able to participate. The Member does not determine whether to grant the request that the order be reviewed.
8. If the Member who reviews the request to review determines that it has sufficient merit, the review will be scheduled for a hearing to determine whether the hearing order contains a serious error or a party was not reasonably able to participate. There may be, at this point, an order staying enforcement of the hearing order until the LTB determines the request to review on its merits.
9. The second stage of the process involves LTB hearing submissions from the parties and determining the request the merits—whether in fact the hearing order contains a serious error or the requester was not reasonably able to participate.

10. If the Member hearing the review on the merits determines that: (a) there was a serious error; or (b) the party requesting the review was not reasonably able to participate, they will direct that the application be heard again on the merits.
11. After (re)hearing the application on the merits, the Member may decide to:
 - (a) dismiss the application and cancel the original hearing order;
 - (b) vary the hearing order;
 - (c) cancel the hearing order and make a new hearing order; or
 - (d) confirm the hearing order.
12. For the reasons set forth below, I have determined there is no need to rehear the application because the Landlord did not establish there was a serious error.

II. Preliminary Matter—Adjournment

13. At the beginning of the hearing on May 20, 2026, the Landlord requested an adjournment because a witness who they wanted to have provide evidence was not available. I agreed that, if the review was granted, to reschedule the (re)hearing of the application but did not agree to adjourn the review.
14. It was not necessary to have witnesses testify on May 20, 2026.
15. The Landlord's request that the LTB review the Hearing Order was based on the assertion that the Hearing Order contained serious errors.
16. A serious error is:
 - (a) an error of jurisdiction such as where the order relies on the wrong section of the RTA or exceeds its jurisdiction by, for example, making an order where the RTA does not apply;
 - (b) a procedural error that raises issues of natural justice;
 - (c) an unreasonable finding of fact on a material issue that would potentially change the result of the order;
 - (d) the existence of 'new' evidence which was unavailable at the time of the hearing and which is potentially determinative of one or more central issues in dispute; or
 - (e) an unreasonable exercise of discretion which results in an order outside the usual range of remedies or results and where there are no reasons explaining the result.
17. The determination of whether the Hearing Order contained serious errors did not require that I hear any (new) evidence.

III. No Recording Ordered

18. On the Request to Review and before me on May 20, 2026, the Landlord asserted that, among other things, the Member made unreasonable findings of fact based on the evidence that was before them on January 28, 2026. Specifically, the Landlord asserted that there was either no support in the evidence for, or the evidence contradicted, certain factual finding by the Member.
19. The burden was on the Landlord to establish on the balance of probabilities that there was either no support in the evidence for, or the evidence contradicted, certain factual finding by the Member. There was, however, no transcript or recording provided by the Landlord.
20. I inquired of Ms Sheppard as to whether she had ordered a recording of the hearing on January 28, 2026. In response, Ms Sheppard indicated that she had twice ordered a copy of the recording in April of 2026 but same had not yet been provided by the LTB, which would have justified an adjournment. **[13:56]**
21. I could find on TOP no Request for Hearing Recording on TOP. I required that Ms Sheppard upload to TOP the Request for Hearing Recording that she had filed with the LTB.
22. Ms Sheppard uploaded one email to LTB@ontario.ca from April 7, 2026 in which she requested an 'written transcript' of the hearing on January 28, 2026. **[DOC-7994787]**
23. It does not appear that Ms Sheppard familiarized herself with the procedures for ordering a recording of an LTB hearing.
24. The LTB does not provide transcripts. The LTB, for a fee, provides parties with recordings of hearings. To obtain a recording, a party must complete a Request for Hearing Recording and pay the required fee. Ms Sheppard did not complete or file a Request for Hearing Recording and does not appear to have paid the required fee.
25. I was clear with Ms Sheppard that I expect licensed paralegals and lawyers who appear before the LTB to be familiar with the practice and procedures applicable to the LTB.
26. Ms Sheppard asserted that I was being unfair to her. I disagree. All too often licensed paralegals--and lawyers--appear before the LTB thinking they can just 'wing it'. That is not, in my view, consistent with their professional responsibilities. I note that the Paralegal Rules of Conduct say, in part:

3.01 (1) A paralegal shall perform any services undertaken on a client's behalf to the standard of a competent paralegal.

...

(4) For the purposes of this rule, a competent paralegal is one who has and applies the relevant knowledge, skills, and attributes appropriate to each matter undertaken on behalf of a client including,

(a) knowing general legal principles and procedures and the substantive law and procedures for the legal services that the paralegal provides;...

27. After the conclusion of the hearing on May 20, 2026, I exercised my jurisdiction under section 201 of the RTA and listened to the recording. Ms Sheppard's recollections of the evidence on January 28, 2026—and consequently her submission to the LTB on May 20, 2026—were, as described further below, not entirely accurate.

IV. No Serious Errors

28. Section 57.1 of the RTA—the section upon which the Member relied in making the Hearing Order—says:

57.1 (1) The Board may make an order described in subsection 57(3) if, on application by a former tenant of a rental unit, the Board determines that the landlord was required to afford the former tenant a right of first refusal under section 53 and failed to do so.

29. Section 53 says, in part:

53 (1) A tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations may, in accordance with this section, have a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed.

30. Subsection 57(3) of the RTA says:

57 (3) The orders referred to in subsection (1) are the following:

1. An order that the landlord pay a specified sum to the former tenant for all or any portion of any increased rent that the former tenant has incurred or will incur for a one-year period after vacating the rental unit.

1.1 An order that the landlord pay a specified sum to the former tenant as general compensation in an amount not exceeding the equivalent of 12 months of the last rent charged to the former tenant. An order under this paragraph may be made regardless of whether the former tenant has incurred any actual expenses or whether an order is made under paragraph 2.

1.2 An order that the landlord pay a specified sum to the former tenant for reasonable out-of-pocket moving, storage and other like expenses that the former tenant has incurred or will incur.

2. An order for an abatement of rent.

3. An order that the landlord pay to the Board an administrative fine not exceeding the greater of \$10,000 and the monetary jurisdiction of the Small Claims Court.

4. Any other order that the Board considers appropriate.

31. While not specifically raised by the Landlord as a “serious error”, I find that the Member’s finding that the ‘real substance’ of what was contemplated by the N13 notice was a renovation and not the demolition of the unit was not only reasonable, it was correct. I note

that on January 28, 2026, the Member specifically directed the parties to *Two Clarendon Apartments Ltd. v. Sinclair* [2019 ONSC 3845 (ON Div Ct)]

A. Rent Abatement

32. I am unable to find that the Member made a serious error—any error—is awarding the Tenants a rent abatement for October of 2024.
33. The Landlord relied on section 8 of OReg 516/06 as restricting the Member's discretion as it relates to the abatement that was ordered.
34. Section 8 of OReg 516/06 does not apply to the grant of an abatement under subsection 57(3). Subsection 8(2) says:

8 (2) For the purposes of section 22, paragraph 3 of subsection 29 (1) and subsection 31 (1) of the Act, this section applies to the Board in making a determination, (emphasis added)

(a) as to whether a landlord, superintendent or agent of a landlord, in carrying out work in a rental unit or residential complex, substantially interfered with the reasonable enjoyment of the unit or complex for all usual purposes by a tenant or former tenant, or by a member of the household of a tenant or former tenant; and

(b) whether an abatement of rent is justified in the circumstances.

35. While the abatement was awarded based on what might be described as 'substantial interference' caused by the Landlord's work to renovate the complex that impacted the Tenant's use of the unit, this was not an application based on the breach by the Landlord of section 22 and the Landlord was not able to refer me to any orders where the LTB found that 'substantial interference' caused by work described on an N13 notice cannot be the basis for an abatement under subsection 57(3).
36. The Landlord argued that the Tenants ought not to be entitled to a rent abatement because they had sublet the unit for at least part of October of 2024. That is, in my view, not relevant. The subtenants may have a claim against the Tenants for the return of rent they paid to the Tenants. That does not, however, mean that the Tenants aren't entitled to an abatement.

B. 'General' Compensation

37. I am unable to find that the Member made a serious error in awarding \$10,000.00 in 'general' compensation.
38. Ms Sheppard argued that there were factual errors in the Hearing Order that resulted in the Member awarding 'general' compensation of \$10,000.00.
39. As noted above:
 - (a) the Request to Review was drafted and Ms Sheppard's argument on May 20, 2026 was made without the benefit of a recording of the hearing on January 28, 2024; but

(b) I listened to the recording from January 28, 2024

40. I accept that there were a number of errors in the Hearing Order, in particular:

- (a) contrary to the assertion in paragraphs 9 and 10, there was no work done in the unit until after the Tenants vacated, but extensive work was done in the complex before the Tenants vacated;
- (b) contrary to the assertion in paragraph 10, the Tenants did not have to bring in jugs of water because the Landlord provided them with water when the water to the unit was shut off as a result of the work being done to the complex; and
- (c) contrary to the finding in paragraph 39, the renovations to the complex did not begin until after the N13 was delivered.

41. It is, however, not sufficient for the Landlord to establish that there are factual errors in the Hearing Order. The Landlord was required to establish that the Member made unreasonable finding of facts on material issues that would potentially change the result of the order. In my view, none of the errors in the Hearing Order were material or could have potentially changed the award of 'general' compensation made by the Member.

42. The Member's grounds for awarding \$10,000.00 in 'general' compensation are found in paragraphs 47 and 48 of the Hearing Order:

47. *The Tenants are requesting \$10,000.00 in general compensation for the emotional stress of the situation including the family's disruption, the issues with the Tenants' son's school registration and the fact that they had to fight with the Landlord for an opportunity to move back into their own home. The Tenant's testimony included that he and his wife always planned to raise their family in their home in Toronto and the Landlord's actions caused their plans to have to change drastically. The Tenants should have been given an N13 with the reason being renovation of the rental unit and the Tenants could have prepared for that temporary time period by finding temporary, alternative accommodations. Instead, the Tenants received the N13 with the reason being demolition and voluntarily left the rental unit, allowing the Landlord to move forward with his project.*

48. *Having considered these circumstances, I find it appropriate to order the Landlord to pay \$10,000.00 to the Tenants in general compensation for the emotional distress for the whole family, the serious disruption and the inconvenience caused by the Landlord serving the N13 in bad faith.*

43. I find that there was evidence that: (a) the situation with the renovation did cause the Tenants stress; and (b) there were issues with the son's school registration.¹ I interpret the reference to having to fight with the Landlord for an opportunity to move back into the unit refers to the fact that the Landlord did not provide on the N13 notice the Tenants with a right

¹ I do not accept as accurate the Landlord's assertion that there was no evidence on January 28, 2024 that the son's schooling was impacted by the situation.

of first refusal as contemplated by section 57.1 of the RTA thereby requiring the Tenants to bring this application, which I accept resulted in stress.²

44. The Landlord argued that the Tenants chose to return to live in the unit knowing that the Landlord would be renovating and this results in the Member's award of \$10,000.00 in 'general' compensation *prima facie* unreasonable. I do not accept that argument. The Tenants were entitled to occupy the unit until either they chose to vacate or the LTB made an order under section 69 of the RTA. The Landlord, in my view, took the risk that starting the renovation to the complex with Tenants in the building would have an adverse impact on the Tenants.
45. I accept that \$10,000.00 in 'general' compensation seems high to me, but the issue is not whether I would have awarded \$10,000.00. The issue is whether the Landlord has established on the balance of probabilities that the award of \$10,000.00 in 'general' compensation amounts to an unreasonable exercise of discretion by the Member which is outside the usual range of remedies or results in circumstances where there are no reasons explaining the result.
46. There was no evidence whatsoever from the Landlord as to the 'typical' range of 'general' compensation awarded in these circumstances. The Landlord did not provide me with a single LTB order in which 'general' compensation was awarded or refer me to any LTB or Divisional Court authorities concerning how 'general' compensation should be determined generally or on an application such as this.
47. I note that Ms Sheppard asserted there were other errors in the Hearing Order, which assertions were **not** borne out by the recording from the hearing on January 28, 2026.
48. Ms Sheppard, for example, asserted that there was no evidence to support the finding in paragraph 9 to the effect that the Tenants had selected a school in Toronto for their son. This is not correct. Mr Starecky's evidence on January 28, 2026 was: (a) the Tenants always intended to live in the unit long-term [1:53:10]; (b) one of the reasons the Tenants wanted to retain the unit was the school district [1:54:00]; and (c) that his son was registered for school in Toronto [1:59:00].
49. In her written submission, Ms Sheppard asserted that Mr. Starecky's evidence on January 28, 2026 was that the Tenants 'only returned [to the unit] for a matter of weeks in October 2024, to collect their personal furniture that they had leased to their subletters'. This was not accurate. The evidence on January 28, 2026 was that the Tenants returned to the unit in October of 2026 to be closer to hospital as a result of certain medical issues being experienced by Ms Starecky. [2:03:50]

C. Putting the Tenants Back into Occupation

50. I am unable to find that the Member made a serious error—any error—by directing that the Tenants could (re)occupy the unit by July 1, 2026.

² The Member did not accept the Landlord's evidence that they *de facto* were going to permit the Tenants to rent one of the renovated units in the complex.

51. The Hearing Order says:

4. *The Landlord shall allow the Tenants to move back into the rental unit once the renovations are completed or by July 1, 2026, whichever date is earlier. ...*
6. *If the Landlord does not allow the Tenants to recover possession of the unit on or before July 1, 2026 then beginning July 2, 2026 the Tenants may file this Order with the Court Enforcement Office (Sheriff) so that the Order may be enforced.*
7. *Upon receipt of this Order, the Enforcement Office is directed to give possession of the unit to the Tenants.*

52. Subsection 53(1) of the provides that a tenant who receives an N13 for the purpose of repairs or renovations have a right of first refusal to (re)occupy their unit once the repairs or renovations are completed.

53. It was, in my view, within the discretion of the Member to make an order requiring that the Landlord permit the Tenants to (re)occupy the unit by July 1, 2026, which would include an order directing the Court Enforcement Office (Sheriff) to enforce the Tenants' right to (re)occupy the unit.

54. Where a landlord breaches subsection 53(1) of the RTA, section 57.1 permits the LTB to make various orders, including any order that the LTB considers appropriate. **[RTA, s. 57(3)]** Where subsection 53(1) applies, the it would, in my view, be appropriate for the LTB to make an order requiring the landlord to permit the tenant to reoccupy their unit.

55. The Landlord asserted, on May 20, 2026, that the renovations will not be completed by July 1, 2026. I do not consider that to result in the Hearing Order containing a serious error.

56. It was open to the Landlord to ask the LTB to amend the Hearing Order based on the fact the renovations would not be completed by July 1, 2026.

57. Before me on May 20, 2026, the parties agreed to the LTB amending the Hearing Order to reflect that the renovations would not be completed by July 1, 2026. What follows from this is that the 'eviction' clauses will be removed, subject to the Tenant being able to apply to the LTB should the Landlord not allow the Tenant to (re)occupy the unit once the renovations are completed. The clause in the hearing Order that requires that the Landlord provide regular updates to the tenants will remain in the Hearing Order.

D. Consideration of Evidence

58. The Landlord argued that the Member did not refer in the Hearing Order to all of the planning- and design-related documents and permits introduced into evidence on January 28, 2024. That was not an error, let alone a serious error.

59. It is simply not reasonable to assume that a Member will refer in a hearing order to every document referenced by a party during a hearing.

60. The additional documents introduced by the Landlord on January 28, 2026 and not referred to by the Member were either: (a) not relevant; or (b) support the Member's finding that what was happening was a renovation to the unit and not a demolition of the unit.

It is ordered that:

1. The request to review the Hearing Order is denied.
2. On consent, paragraph 4 of the Hearing Order amended accordingly:
 4. *The Landlord shall allow the Tenants to move back into the rental unit once the renovations are completed or by July 1, 2026, whichever date is earlier.*
 - ~~6. *If the Landlord does not allow the Tenants to recover possession of the unit on or before July 1, 2026 then beginning July 2, 2026 the Tenants may file this Order with the Court Enforcement Office (Sheriff) so that the Order may be enforced.*~~
 - ~~7. *Upon receipt of this Order, the Enforcement Office is directed to give possession of the unit to the Tenants.*~~
3. The Interim Order is cancelled. The stay of the Hearing Order is lifted immediately.

June 3, 2026
Date Issued

E. Patrick Shea
Vice Chair, 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.