



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

Citation: Mccallum v Homestead Land Holdings Limited, 2026 ONLTB 43899

Date: 2026-06-03

File Number: LTB-T-051786-23-RV

In the matter of: 711, 1310 MCWATTERS RD
OTTAWA ON K2C3N8

Between: Robert Mccallum Tenants
Christine Mccallum

And

Homestead Land Holdings Limited Landlord

Review Order

Robert Mccallum and Christine Mccallum (the 'Tenants') applied for an order determining that Homestead Land Holdings Limited (the 'Landlord') substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.

This application was resolved by order LTB-T-051786-23 issued on November 25, 2025. On December 9, 2025, the Tenants requested a review of the order.

A preliminary review of the review request was completed without a hearing. In determining this request, I reviewed the materials in the LTB's file as well as the audio recording for this hearing.

Determinations:

Procedural fairness

1. The order under review arises from a *de novo* hearing of the application. The matter was first resolved by a previous order which was cancelled after a review. The Tenants submit that there was a direction requiring the parties to disclose their evidence by a certain date but that the Landlord was permitted to rely on documents filed prior to the issuance of this direction and the Tenants complied with this direction but some of their evidence was not accepted. There are two problems with this submission. First, the direction was in interim order LTB-T-051786-23-RV-IN2 which required parties to disclose their evidence no later than seven days prior to the *de novo* hearing "if they have not already done so." The Landlord had already disclosed the evidence. The second problem is that the "evidence" that the Tenants assert was not considered was a proposed amendment to the application and not evidence.

2. The Tenants submit that the Member seriously erred by not granting remedies that were not requested in the application. The Tenants submit that a rent abatement is an implied remedy. There are no implied remedies. A tenant who wishes for the LTB to order a rent abatement must claim a rent abatement on their application. The LTB has no jurisdiction to award remedies that were not claimed: see *Beauge v. Metcap Living Management Inc.*, 2012 ONSC 1160. In any event, the Member considered ordering a rent abatement and decided not to do so, not because it was not claimed but because it was not appropriate in the circumstances.
3. The Tenants submit that early in the hearing they disclosed that the Tenant RM has a cognitive disability and that the Member failed to accommodate this disability. The hearing recording does not support this submission. The Tenant RM struggled to give testimony, then the Tenant CM disclosed that RM has a cognitive disability but did not propose any specific accommodation. The Member then asked if CM could give the evidence on behalf of both Tenants and she said she could. There are further allegations in the review request that the Member unfairly refused to allow both Tenants to testify at the same time. If the Tenants were permitted to testify at the same time in the previous hearing this did not entitle them to do so in the *de novo* hearing. The Member adjudicating the hearing controls the conduct of the hearing and, in most LTB hearings, parties testify individually. The Tenants did not identify, at the hearing or in the review request, a disability-related reason that they must testify together. It was sufficient to receive most of the Tenants' evidence from CM.
4. The Tenants submit that the hearing was conducted in a rapid and adversarial manner. The hearing proceeded at pace that is similar to most other LTB hearings; it was not an abnormally fast pace. The Member did threaten to order costs against the Tenants once, when CM characterized a cross-examination question as silly. It may have been somewhat heavy handed to threaten costs in this case, but it does not rise to the level of a serious procedural error. The Tenants submit that the Member was intimidating to them. A few minutes after the Member threatened to order costs, the Tenants vigorously argued with the Member about a ruling that he made accepting the Landlord's documentary evidence, which had been disclosed in compliance with the LTB's Rules and interim order LTB-T-051786-23-RV-IN2. The Member explained several times why he accepted the Landlord's evidence and his tone became impatient after the Tenants repeatedly stated that they did not understand the ruling. It was not a procedural error for the Member to become impatient with the Tenants in these circumstances. In fact, he exercised considerable restraint.
5. The Tenants submit that the Member interrupted them several times in the hearing and that these interruptions were inappropriate because of the Tenants' disabilities. The Tenants assert that they have cognitive disabilities but they have not provided any details, prior to the hearing, during the hearing, or in the review request, about the specific barriers that they experience with respect to presenting evidence. The Tenants did file a request for accommodation prior to the hearing; they requested a virtual hearing but they did not request accommodations with respect to the conduct of the hearing. Further, many of the Member's interruptions were to keep the evidence on track and

relevant. This active adjudication assisted the Tenants and so I am not satisfied that these interruptions were procedurally unfair.

6. The Tenants submit that the Landlord's representative was given 10 uninterrupted minutes to deliver his closing submissions. A party is not entitled to have the exact same amount of time to give closing submissions as was taken by the opposing party. In this case, the Tenant CM gave closing submissions until she had no more submissions to deliver. She was interrupted once when she started talking about the previous order in this matter. This was appropriate because the previous order was cancelled and is not relevant to the *de novo* hearing.

Alleged error of law

7. The Tenants submit that the Member erred in law by accepting the Landlord's representative's argument that their allegations should have been made in a T6 application about maintenance and not a T2 application alleging substantial interference. While the Member notes at paragraph 18 of the order that the Landlord had argued that the Tenants should have filed a T6 application, he treats the application as a T2 application. The Member's acknowledgement of the Landlord's argument did not cause him to treat the T2 application as anything other than a T2 application.
8. The Tenants submit that because the Member acknowledged the Landlord's argument that the application should have been a T6, the Member declined to order remedies (specifically rent abatement and damages) that the Tenants view as "T2 remedies." The reason the Tenants were not awarded a rent abatement was that the Member found that the Landlord made reasonable attempts to control the pigeons. The only way that the Landlord was found to have substantially interfered with the Tenants' reasonable enjoyment was to prevent the Tenants from erecting netting without a good reason. The Tenants did not give evidence that this netting would solve the problem and so it was reasonable not to assume that the balcony would have been pigeon free but for the Landlord's refusal to allow netting. In these circumstances the remedy ordered, that the Tenants be permitted to erect netting, was within the range of reasonable outcomes. Damages were not ordered or considered because they were not claimed in the application.

Alleged errors of fact

9. The Tenants disagree with the Member's characterization of their self-produced Tenant Statement as a "timeline." The Tenants submit that the Member improperly excluded the admission of this statement into evidence because he incorrectly categorized it as an amendment, and they submit that the Member acted inconsistently when he referred to information in the Tenant Statement in the order after refusing at the hearing to admit it into evidence.
10. The essential problem here is that the self-produced Tenant Statement is not evidence. It is a document setting out a narrative and requested remedies. When the Tenants first sought to introduce it they introduced it as a proposed amendment. It was not accepted

as an amendment because it was buried in evidentiary disclosure and the request to amend was not made in an overt way. The Member referred to facts that were in the statement because these facts were also stated in the Tenants' testimony, which was accepted as evidence.

11. The remainder of the Tenants' allegations regarding errors of fact are essentially a re-arguing of the case. That is not the purpose of a review.

Disposition

12. On the basis of the submissions made in the request, I am not satisfied that there is a serious error in the order or that a serious error occurred in the proceedings or that the Tenants were not reasonably able to participate in the proceeding.

It is ordered that:

1. The request to review order LTB-T-051786-23 issued on November 25, 2025 is denied. The order is confirmed and remains unchanged.

June 3, 2026
Date Issued

Renée Lang
Vice Chair, 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.