

CITATION: McCready v. Toronto Community Housing Corporation, 2025 ONSC 4696
DIVISIONAL COURT FILE NO.: 636/24
DATE: 20250814

**SUPERIOR COURT OF JUSTICE – ONTARIO
DIVISIONAL COURT**

RE: ELIZABETH MCCREADY, Moving Party

AND:

TORONTO COMMUNITY HOUSING CORPORATION, Responding Party

BEFORE: O’Brien J.

COUNSEL: *Self-Represented* Moving Party

Katie Douglas, for the Responding Party

HEARD: In-writing

ENDORSEMENT

Overview

[1] The moving party, Ms. McCready seeks an extension of time to file a Notice of Appeal from a decision of the Landlord and Tenant Board dated August 13, 2024. This motion was originally scheduled to be heard by videoconference before Matheson J. on July 22, 2025. Matheson J. adjourned the motion to be heard before me by videoconference on August 8, 2025. On August 7, 2025, I directed the hearing to proceed in-writing. My directions were released to the parties by e-mail on August 7, 2025 and are attached as an appendix to this endorsement.

[2] In my directions, I gave the tenant until 12 p.m. on August 8 to provide any additional submissions. She did file additional submissions totaling 25 pages including additional evidence. In her additional submissions, the tenant provided information as to why she was unavailable on August 7, 2025. The tenant also provided information to support why she says human generated rather than Zoom captioning was needed. I appreciate the tenant’s desire to explain her position, but I do not need to determine those issues since the decision to proceed in-writing has already been made.

[3] The Board’s August 13, 2024 decision addressed the tenant’s fourth request to review in relation to a June 7, 2023 order of the Board. In the June 7, 2023 order, the Board found the tenant had not complied with the terms of a previous consent order that set out a payment plan for the tenant to pay rent and rental arrears. The arrears at the time of the consent order (December 5, 2022) were \$35,627.77. In the June 7, 2023 order, the Board ordered the tenancy to be terminated and for the tenant to move out of the unit by June 18, 2023. In the August 13, 2024 review order, there

was no dispute the arrears of rent had climbed to \$48,569.65 nor that the tenant had breached the prior Board order. The only issue for the Board was whether it would be unfair in all the circumstances to grant the tenant relief from eviction. The Board determined it would be unfair to grant relief from eviction, although it did postpone the eviction in consideration of the tenant's circumstances.

[4] The test for granting an extension of time is well-established. As set out in *Enbridge Gas Distribution v. Froese*, 2013 ONCA 131, at para. 15, the overarching principle is whether the justice of the case requires that an extension be given. The court will take into account all relevant considerations including the following:

- a. Whether the moving party formed a *bona fide* intention to appeal within the relevant time period;
- b. The length of, and explanation for, the delay in filing;
- c. Any prejudice to the responding party caused, perpetuated or exacerbated by the delay; and
- d. The merits of the proposed appeal.

[5] The landlord, Toronto Community Housing Corporation, does not dispute that the tenant has met all factors of the test other than relating to the merits of the appeal and the overall justice of the case. On the first two factors, the tenant has asserted that she attempted to file her material with the court on the date it was due but arrived late when the court office was closed. She ultimately filed her material approximately 2.5 weeks after it was due. She explains that she was seeking medical treatment the day before her material was due. She also was informed that evening that her father had died in New Zealand. The landlord concedes the tenant formed a *bona fide* intention to appeal within the relevant time period and that the length of and explanation for the delay were acceptable. It also acknowledges that it did not experience any prejudice due to the short delay in the tenant filing her materials. These elements of the test are therefore met.

[6] However, as stated by Gillese J.A. in *Enbridge Gas*, at para. 16, lack of merit alone can be a sufficient basis on which to deny an extension of time.

[7] For the following reasons, I have concluded this appeal should not be permitted to proceed because of a lack of merit.

Analysis on Merits of the Appeal

[8] The tenant makes two arguments on the merits of her appeal. The first is that the Board erred in failing to consider s. 83(6) of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 (the Act) which, for rental arrears accumulating during the COVID-19 pandemic (after March 17, 2020), required the Board to consider whether the landlord attempted to negotiate an agreement with the tenant including for the payment of arrears. In her additional submissions, the tenant broadened the scope of this argument saying the Board failed to consider how the COVID-19 pandemic and her disability impacted her ability to comply with the mediated repayment agreement.

[9] The tenant's second argument is that the Board likely had "some unconscious but well-meaning bias" against her because she was disabled and unable to appear competent. She argues that although she had been paying full rent plus an additional amount towards arrears since January 2024, the Board's likely biased view of her led it to find her incapable of continuing to pay rent plus a payment arrangement. The tenant relies on "crip time," which she explains is a concept reflecting the non-linear and protracted pace of progress for disabled individuals. She also underscores the progress she has made since January 2024 in consistently paying her rent and in pursuing various avenues that will increase her ability to obtain a job and to have additional supports to assist her.

[10] In her additional submissions, the tenant also states that her ability to participate in the June 2024 Board hearing was "severely limited" and that she did not formally request accommodation because unsupported disability affects communication and self-advocacy.

[11] I agree with the landlord that the tenant does not have a tenable appeal. My conclusions are not meant to undermine the struggles the tenant has faced, nor the efforts she is making to move forward. But the court's task is not to assess the tenant's challenges, intentions, or efforts in isolation. It is instead to review the decision of the Board for errors of law.

Subsection 83(6)

[12] Section 210 of the Act limits the court's jurisdiction to appeals on errors of law. Although the tenant has claimed a breach of s. 83(6) of the Act, her argument does not raise a plausible error of law.

[13] Subsection 83(1) authorizes the Board to refuse to grant an eviction unless it is satisfied having regard to all the circumstances, that it would be unfair to refuse. In its reasons, the Board expressly considered s. 83. The Board member acknowledged the tenant's health challenges and their impact on her ability to work full-time hours, but also noted the substantial arrears of rent.

[14] Subsection 83(6) is limited to requiring that the Board consider whether the landlord has attempted to negotiate an agreement with the tenant. It states that for arrears after March 17, 2020, the Board shall "consider whether the landlord has attempted to negotiate an agreement with the tenant including terms of payment for the tenant's arrears."

[15] Here, the Board expressly considered the history of arrears and non-payment, which dated back before 2020. The Board adverted to the multiple attempts to reach agreement with the tenant, which were breached. At para.19, the Board stated: "The Landlord has attempted to work with the Tenant on multiple occasions, however the arrears of rent only seem to increase after each repayment plan agreement is entered into." Contrary to the tenant's expanded argument, the Board was not required by the Act to more generally consider the impact of the COVID-19 pandemic.

[16] The tenant does not agree with the Board's decision under s. 83, but the determination under that provision is an exercise of discretion: *Jackson v. Capobianco*, 2017 ONSC 3324, at para. 7. An appeal on this ground does not raise an error of law and is bound to fail.

Bias/Procedural Fairness

[17] There is also no plausible likelihood the tenant will succeed in her submission that the Board was biased or breached procedural fairness. The tenant's submission that the Board member was likely biased is a bald statement without factual basis. Establishing bias requires meeting a stringent standard. In this case, the Board provided detailed reasons for not permitting the tenant to proceed with a proposed repayment plan. These reasons included that the arrears owing were substantial and exceeded the Board's monetary jurisdiction; the arrears of rent dated back more than 6 years; and the landlord had attempted to work with the tenant on multiple occasions but the arrears only seemed to increase after each repayment plan was entered into. In recognition of the tenant's circumstances, the Board also found it would not be unfair to delay the termination of the tenancy. Considering the Board's detailed reasons and the absence of a factual basis to demonstrate bias, there is no prospect of the tenant succeeding on this ground.

[18] The tenant also asserts she was denied procedural fairness because she was severely limited from participating in the June 3, 2024 hearing that led to the order she seeks to appeal. She states that at that time, she did not have a wheelchair and had only been receiving consistent income supports for six months. However, she does not dispute that she attended and participated in the hearing, which occurred by videoconference. She also acknowledges she did not raise any request for accommodation at the hearing. It does not appear that she raised any issue of procedural unfairness at the hearing, which means this argument would be raised for the first time on appeal. In all of the circumstances, there is no reasonable prospect of success on this argument on an appeal.

Additional Information about Personal Progress and Readiness for Employment

[19] The tenant is to be applauded for the efforts she has made to pursue her studies and health recovery. However, much of the information she provides arose after the Board's order and could only be considered by the court if the tenant were successful in introducing it through a motion for fresh evidence. The Board was entitled to weigh the relevant circumstances at the time and grant the order terminating the tenancy. The additional information provided by the tenant, even if it were admitted on appeal, would not provide a basis for the court to find an error of law in the Board's decision.

Disposition

[20] The motion therefore is dismissed. The landlord has not requested costs and none are awarded.

Released: August 14, 2025

Appendix A: Directions Released by E-mail August 7, 2025

Justice O'Brien directs as follows:

[1] These directions set out the court's decision to proceed with this matter on August 8, 2025 in-writing. The tenant shall have until 12 p.m. on August 8, 2025 to provide any additional brief submissions.

[2] This matter has been going on for a considerable period. The tenant, Ms. McCreedy, has brought a motion for an extension of time to appeal the decision of the LTB dated August 13, 2024. The landlord's initial application before the LTB was heard on April 11, 2023 and resolved by a June 7, 2023 order. The tenant requested a review of the order, which was ultimately dismissed as abandoned. The tenant then requested a review of the order dismissing the initial request for review. This second review was also dismissed as abandoned. The tenant then made a third request for review, which was dismissed. The August 13, 2024 order addressed the tenant's fourth request for review.

[3] In the August 13, 2024 order, the LTB noted there was agreement the tenant breached a prior repayment plan for the payment of rent. The arrears of rent as of the date of the LTB's order were \$48,56.965. The issue for the LTB was whether it would be unfair in all the circumstances to grant the tenant relief from eviction. The LTB concluded it would be unfair to grant relief from eviction because the arrears were substantial and the evidence suggested the tenant was not capable of repaying them. The LTB delayed the termination of the tenancy until September 30, 2024.

[4] It is now well over two years since the first hearing before the LTB. It has been almost a year since the LTB issued the order the tenant seeks to appeal. The tenant's motion to seek an extension of time to file her appeal still has not been heard.

[5] The motion was scheduled to be heard by Justice Matheson on July 21, 2025. The tenant requested an extension of time to prepare for the motion, which Justice Matheson granted. Although the tenant asked for the motion to be rescheduled on or after August 14, Justice Matheson scheduled it for August 8, 2025. Justice Matheson acknowledge the tenant's health-related challenges and the importance of the steps she is taking in her courses, but also emphasized the tenant has an obligation to this court to move her matter forward as a priority. Justice Matheson stated this was particularly the case given the tenant was requesting an extension of time.

[6] The motion was then scheduled to be heard before me on August 8, 2025. In order to accommodate the tenant's health-related needs, Justice Matheson made the following

arrangements for the hearing: (1) scheduling the hearing in the afternoon as requested by the tenant; (2) scheduling the hearing for 2 ½ hours rather than the usual 2 hours to allow for extra breaks; and (3) arranging for the Registrar to turn on Zoom captioning during the hearing. This captioning was provided in the hearing before Justice Matheson as well.

[7] On August 1, 2025, the tenant wrote to the court advising she had an incident involving her landlord that exacerbated her health symptoms, including causing concussion symptoms and tinnitus. Because of the incident, the tenant requested additional accommodations, namely human generating captioning rather than Zoom captioning, 3 hours for the motion; and that the court be prepared to immediately stop upon a hand gesture for her.

[8] It is not clear why or how human generated captioning will support the tenant in a way that Zoom captioning would not. I appreciate the tenant is saying her symptoms have been exacerbated but the connection between those symptoms and the two types of captioning is unclear. The tenant was able to function with Zoom captioning before Justice Matheson.

[9] While the court made inquiries about the additional accommodations the tenant sought, it also proposed that the matter could instead proceed in-writing, which is a common method for determining motions for extensions of time. The landlord consented to this. The tenant agreed to proceed in-writing so long as she had until August 15, 2025 to supplement her written materials. The landlord objected to an extension of time for the tenant to supplement her written materials.

[10] I have decided the matter must be heard on August 8, 2025. The proceeding has already been protracted and the issue of whether the tenant can start her appeal has not been decided yet. The tenant already received one extension of time to allow her to prepare for the hearing. Although the tenant has requested until August 15, 2025 to supplement her written submissions, if the court grants another week for the tenant to do so, the motion likely will not be determined for another month because of limited judicial resources. I do not find this reasonable considering the history of the matter including the adjournment of the last hearing date.

[11] The court sent directions this morning stating the hearing would proceed on August 8 and directing the tenant to advise whether she preferred to proceed in-writing or by videoconference. The directions also stated that if the matter proceeded in-writing, the tenant would have until 9 am tomorrow to provide any additional submissions. I was subsequently advised the tenant had sent an email to the court this morning saying she would be unavailable to respond to emails from 11 am today until 9 am tomorrow. The court's directions were sent before 11 am. In any event, where it is clear the court will need to issue further directions about the tenant's own immediately imminent hearing, it is unreasonable or the tenant to be unavailable for the rest of the day.

[12] In all the circumstances, I have decided the matter will proceed on August 8, 2025 in-writing. The landlord disputes the tenant's account of events from last week. In any event, the court is not, on the information provided, in a good position to decide what accommodations are justified for a videoconference hearing. Further, motions like this one are often heard in-writing.

[13] The tenant shall have until 12 p.m. on August 8 to provide any additional in-writing submissions. I note that she has been able to write to the court both last Friday to request additional

accommodations and this week to provide her position on proceeding in-writing, so it appears she will be able to supplement her written submissions if needed. She should be aware the intention of these additional submissions is only to address anything new that she feels she needs to address in the landlord's material and not to repeat anything already said in her factum.