



Order under Section 87 / 88.2 Residential Tenancies Act, 2006

Citation: Liman v Henderson Legal Services, 2026 ONLTB 1492

Date: 2026-01-06

File Number: LTB-L-077514-23

In the matter of: Upper, 118 MARSHALL ST
BARRIE ON L4N4L5

Between: Arie Liman

Landlord

And

Kai Zhu
Na Lyu

Former Tenants

Arie Liman (the 'Landlord') applied for an order requiring Kai Zhu and Na Lyu (the 'Former Tenants')

- to pay the rent and daily compensation that the Former Tenants owe.
- to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on July 28, 2025. The Landlord and the Former Tenant Kai Zhu attended the hearing. The Landlord was represented by Ti-Anna Hall and the Former Tenants were represented by Joan Henderson

Preliminary - Section 82 Issues:

1. At the commencement of the hearing, the Former Tenants and their representative intended to raise issues of their own with respect to harassment, substantial interference and the Landlord collecting and/or retaining money illegally pursuant to section 82 of the *Residential Tenancies Act, 2006* (the Act).
2. The Former Tenant's section 82 claims were first disclosed to the Board and the Landlord on September 11, 2024.
3. The parties agree that the Former Tenants vacated the rental unit on December 30, 2022.
4. Sections 29 and 135 of the Act speak to claims that may be considered in accordance with the Tenant's section 82 claims and the remedies that may be ordered if the Board finds that a landlord has been in breach of the Act. Subsections 29(2) and 135(4) of the Act

state a tenant application must be made no more than one-year after the day the alleged conduct giving rise to the application occurred.

5. The Act is silent on a limitation period for concerns raised pursuant to section 82. However, section 82 of the Act permits a tenant to raise any issue that could be the subject of an application made by the tenant under this Act. As such, I find that a claim under section 82 contains the same limitation period mentioned in subsections 29(2) and 135(4) of the Act.
6. As the Former Tenant's section 82 claims were filed with the Board more than one-year after the Former Tenants vacated the rental unit and more than one-year after these alleged issues occurred, the Board does not have jurisdiction to consider these claims and as such, I declined to hear the Former Tenant's section 82 claims at the hearing.

Determinations – L10 application:

7. As explained below, the Landlord did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
8. I am satisfied that the Landlord served the Former Tenants with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
9. The Former Tenants vacated the rental unit on December 30, 2022.
10. The application was filed within one year after the Former Tenants ceased to be in possession of the rental unit.
11. The Landlord's application was filed on October 13, 2023 and claims arrears of rent and unpaid utility charges. The charges claimed by the Landlord are for the period after the Former Tenants vacated the rental unit.
12. The parties do not dispute that the tenancy commenced on July 27, 2022, and was for a fixed term period ending on June 26, 2023. The monthly rent per this agreement was due on the 26th day of each month (LL exhibit #1).
13. The parties further agree that the Former Tenants gave the Landlord notice to terminate the tenancy on November 26, 2022, via email (LL exhibit #2).
14. At the time the Former Tenants vacated the rental unit, rent was paid in full up to January 26, 2023.
15. The Landlord's claim for arrears and unpaid utility costs are pursuant to section 88 of the Act which state:

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
16. An application of section 88(1) para. 1 suggests that the Former Tenants may owe arrears up to June 26, 2023, as that is the earliest termination date that the Former Tenants could have properly specified on the notice of termination. However, I must also consider and apply sections 88(3)-(4) of the Act which state:
- (3) Despite subsections (1) and (2), if the landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, the tenant who abandoned or vacated the rental unit is not liable to pay an amount of arrears of rent that exceeds the lesser of the following amounts:
 1. The amount of arrears of rent determined under subsection (1) or (2).
 2. The amount of arrears of rent owing for the period that ends on the date the new tenant is entitled to occupy the rental unit.
 - (4) In determining the amount of arrears of rent owing under subsections (1), (2) and (3), consideration shall be given to whether or not the landlord has taken reasonable steps to minimize losses in accordance with section 16.
17. Section 16 of the Act states:
- 16** When a landlord or a tenant becomes liable to pay any amount as a result of a breach of a tenancy agreement, the person entitled to claim the amount has a duty to take reasonable steps to minimize the person's losses.
18. As there is no dispute with respect to the date the Former Tenants vacated the rental unit, the date they gave notice of termination or the amount of arrears claimed, the only issue for the Board to determine is whether the Landlord has taken reasonable steps to mitigate their losses pursuant to sections 88(4) and 16 of the Act.
19. As explained below, I find that the Landlord has failed to prove that they have has taken reasonable steps to mitigate their losses and as such, the application should be dismissed.
20. The Landlord provided oral testimony at the hearing and stated that he signed an agreement with a realtor on January 10, 2023 to advertise the rental unit for \$100.00 more per month. The Landlord submitted into evidence a copy of this listing agreement (LL exhibit #3).
21. The Landlord originally stated at the hearing that from January 2023 to May 2023 there was no interest in the rental unit and that viewings / interest did not happen until July 2023. The Landlord submitted into evidence an activity report log from his realtor confirming that

approximately 15 viewings were scheduled from July 12, 2023 to August 8, 2023. (LL exhibit #4).

22. The Landlord testified that the rental unit was not re-rented until September 1, 2023.
23. On cross-examination, the Landlord confirmed that the Former Tenant Kai Zhu had reached out to him prior to vacating the rental unit and offered to assist with staging and advertising the rental unit through his own realtor.
24. The Former Tenant submitted into evidence email correspondence between himself and the Landlord on January 4, 2023 (TT exhibit #1). In the emails, the Landlord requests that the Former Tenants pay the relator commission to re-rent the unit and find a new tenant and further states:

“Sorry Jeff if it’ll take too much of my time and energy with you I probably will ask you to stay with our agreement. You creating the problems on the smooth surface. I don’t need this headache.”

25. The Landlord also agreed on cross-examination that prior to vacating the rental unit, he advised the Former Tenants that it could take 3-5 months for him to find the right tenants and that he was still considering them Tenants under the lease agreement.
26. On cross-examination of the Landlord, the Former Tenants representative challenged the efforts of the Landlord to re-rent the unit prior to the end of the fixed-term tenancy agreement. The Former Tenants relied on the real estate listings filed with the Landlord’s evidence package (TT exhibit #2), which confirm that from January 11 to May 31, 2023 that listings contained a note stating:

“Do not book through showing system or office please contact the owner directly at 416 908 3114”

27. After the Former Tenant’s representative raised the above noted concern in the real estate listings up to May 31, 2023, the Landlord then changed his initial testimony and stated that he received phone calls and/or had showings with prospective tenants during the months of January to May, 2023, but that none of these individuals were interested or approved for the rental unit.

Findings & Analysis:

28. Based on the evidence and submissions before the Board, I am not satisfied on a balance of probabilities that the Landlord has taken reasonable efforts to mitigate their losses and to re-rent the unit immediately after the Former Tenants had vacated.
29. The Landlord’s testimony was inconsistent and changed when being cross-examined by the Former Tenant’s representative and I further note that the Landlord was evasive throughout the cross-examination session. I therefore do not find the Landlord’s initial testimony / evidence to be credible.
30. The Former Tenant’s email evidence / discussions with the Landlord prior to the tenancy terminating and the directions of the Landlord’s realtor / brokerage company prior to May

31, 2023, suggests to that the Landlord was not interested in re-renting the unit prior to the end of the fixed-term period set out in the Former Tenant's lease agreement and that the Landlord only took reasonable steps to have the unit re-rented as the end of this fixed term period was approaching.

31. The nine-month vacancy and/or delay in re-renting the unit seems unlikely in this current rental market and the Landlord provided no reasonable explanation as to why he did not want prospective tenants contacting his realtor until after May 31, 2023.

32. As such, I am not satisfied that the Landlord has taken reasonable steps to mitigate their losses as required by section 16 of the Act and therefore, the application must be dismissed as no arrears of rent or unpaid utilities charges were owing at the time the Former Tenants vacated the rental unit.

33. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Landlord's application is dismissed.

January 6, 2026
Date Issued

Fabio Quattrociocchi
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.