



Order under Section 87 / 88.2 / 89 Residential Tenancies Act, 2006

Citation: Przybylo v Pocknell, 2026 ONLTB 1988

Date: 2026-01-07

File Number: LTB-L-095855-23

In the matter of: 1490 Highnoon Dr
Windsor Ontario N9G3B6

Between: Jaroslaw Przybylo Landlord

And

Michael Pocknell Former Tenants
Denise Pocknell

Jaroslaw Przybylo (the 'Landlord') applied for an order requiring Michael Pocknell and Denise Pocknell (the 'Former Tenants') to pay the rent and daily compensation that the Former Tenants owe.

The Landlord also applied for an order requiring the Former Tenants to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlord also applied for an order requiring the Former Tenants to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenants, another occupant of the rental unit or someone the Former Tenants permitted in the residential complex.

This application was heard by videoconference on July 17, 2025.

The Landlord, the first-named Former Tenant and the Former Tenants' legal representative, John Kulikowski, attended the hearing.

When the capitalized word "Former Tenant" is used in this order, it refers to all persons identified as a Former Tenant at the top of the order.

Determinations:

1. As explained below, the Landlord proved the allegations contained in the application on a balance of probabilities. Therefore, the Former Tenant will be required to pay the Landlord \$3,399.79.
2. I am satisfied that the Landlord served the Former Tenant 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.
3. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.
4. The Former Tenant vacated the rental unit on September 19, 2023.
5. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Rent and daily compensation owing

6. The parties dispute the amount of lawful rent. The Landlord's position is that the rent was \$1,600.00 per month. The Former Tenant's position is that the Landlord illegally increased the rent; therefore, the lawful rent was \$1,300.00.
7. The undisputed facts with respect to the rent increase are as follows. The lawful rent when the Former Tenant moved into the rental unit in 2014 was \$1,200.00. The rent was lawfully increased to \$1,300.00 over the years of the Former Tenant's occupancy. Some time in September 2022 the Landlord and the Former Tenant discussed the rent amount. On October 1, 2022, the Landlord increased the rent to \$1,600.00. The Landlord did not serve the Former Tenant with an N1 notice of increase. The Former Tenant paid the increased amount from October 2022 to February 2023 and then did not pay any rent for March, April and May 2023. The Former Tenant then made a lump sum payment of the increased rent amount for 3 months to clear the arrears. The Former Tenant stopped paying rent in June 2023. The Landlord served the Tenant with an N4 notice of termination due to rent arrears.
8. The Landlord's position was that the increase in rent was an agreement between the parties. The Landlord stated that he required the rental unit for himself and that in order to avoid eviction the Former Tenant agreed to pay an increased rent so the Landlord could then afford to rent another unit for himself.
9. Section 116, subsections (1), (3), and (4) of the Residential Tenancies Act, 2006 (the 'Act') set out the requirements for rent increases as follows:

116 (1) A landlord shall not increase the rent charged to a tenant for a rental unit without first giving the tenant at least 90 days written notice of the landlord's intention to do so.

(3) The notice shall be in a form approved by the Board and shall set out the landlord's intention to increase the rent and the amount of the new rent.

(4) An increase in rent is void if the landlord has not given the notice required by this section, and the landlord must give a new notice before the landlord can take the increase.

10. Here the Landlord did not give 90 days written notice and the notice was not on the N1 form approved by the Board. In addition, the rent increase was above the guideline which is prohibited under subsection 120 (1) of the Act.

11. In certain situations, the illegality of a rent increase as set out in subsection 116(4) may be cured by subsection 135.1(1) which states:

135.1 (1) An increase in rent that would otherwise be void under subsection 116 (4) is deemed not to be void if the tenant has paid the increased rent in respect of each rental period for at least 12 consecutive months.

12. However, in this case the Tenant only paid the increased rent for 8 monthly rental periods from October 2022 to May 2023. Therefore, the October 1, 2022, increase cannot be saved by subsection 135.1(1).

13. Finally, parties cannot contract out of the Act. Subsection 3(1) of the Act states that the Act applies "despite any other Act and despite any agreement or waiver to the contrary" [emphasis added]. Therefore, I cannot accept the Landlord's submission that he and the Former Tenant agreed to the increase.

14. As a result of the above, the lawful monthly rent remained \$1,300.00 per month from October 1, 2022 to the date the Former Tenant vacated the rental unit. The Tenant paid \$300.00 per month more than the lawful rent for the rental periods of October 2022 to May 2023 for a total of \$2,400.00. This overpayment shall be applied towards the Landlord's claimed arrears.

15. The rent was due on the first of each month. Based on the Monthly rent, the daily rent/compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.

16. The Former Tenant has not made any payments since the application was filed.

17. The tenancy ended on September 19, 2023, as a result of the Former Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Former Tenant's obligation to pay rent ended on that date.

18. The rent arrears and daily compensation owing to September 19, 2023, are \$4,712.06 less \$2,400.00 resulting from the Tenant's overpayment of rent. The total rent arrears and daily compensation owing by the Former Tenant to the Landlord is \$2,312.06.

19. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Compensation for unpaid utility costs

20. It was undisputed that the Former Tenant failed to pay the water, electricity, and gas charges under the tenancy agreement resulting in out-of-pocket expenses for the Landlord.

21. The Landlord submitted copies of the following utility bills:

Company	Billing Issue Date	Amount Due	
Enwin	12-May-23	\$ 140.52	
	13-Jun-23	\$ 149.63	
	13-Jul-23	\$ 176.96	
	14-Aug-23	\$ 181.91	
	19-Sep-23	\$ 164.67	
Reliance	29-May-23	\$ 137.41	
	28-Jun-23	\$ 19.20	
	28-Jul-23	\$ 19.20	
	29-Aug-23	\$ 137.91	
Enbridge	26-May-23	\$ 71.64	
	24-Jun-23	\$ 40.97	
	25-Jul-23	\$ 35.28	
	25-Aug-23	\$ 35.26	
TOTAL		\$ 1,310.56	

22. The Landlord also submitted 3 further statements for each of the utility companies as listed above; however, the billing periods of those statements exceeded the date that the Former Tenant vacated the unit. As a result, I have prorated those final three statements up to the date the Tenant vacated as follows:

Company	Prorated Billing Period	Prorated Amount Due
Enwin (electricity)	Aug 29, 2023 to Sep 19, 2023	54.12
Enwin (water)	Aug 25, 2023 to Sep 19, 2023	34.06
Enwin (waste water)	Aug 25, 2023 to Sep 19, 2023	39.26
Reliance	Aug 29, 2023 to Sep 19, 2023	13.64
Enbridge	Aug 24, 2023 to Sep 19, 2023	36.18
TOTAL		177.26

23. The total amount the Former Tenant owes the Landlord for unpaid utilities is \$1,487.82

Compensation for damage

24. The Landlord testified he incurred costs of \$768.19 to repair and/or replace items that were damaged in the rental unit or were missing. For each of the items claimed the Landlord submitted a corresponding photo depicting the issue and a receipt for the materials and

labor required to remedy the issue. The Former Tenant did not dispute this part of the Landlord's claims and I am satisfied, on the balance of probabilities, that the claimed damages were not caused by expected wear and tear over the course of the tenancy. The Landlord's costs for labor and repair included:

- Replacement of missing closet door, paint for door and installation.
- Replacement of broken lower-level door, paint for door, replacement of doorknob for the door and installation.
- Missing doorknobs.
- Replacement of lock inserts on garage door.
- Removal of all left over items and waste dump cost.
- Replacement of missing hinges from kitchen door cabinet.
- Missing window screens.

25. The Landlord also claimed additional damages of \$3,174.94 for driveway cleaning and repainting the garage door. The Landlord testified that the Former Tenant owned his own asphalt business and that his work truck and materials caused staining on the driveway which required cleaning. The Landlord further testified that the garage door appeared to be damaged at some point by the Former Tenant and the Landlord believed that the Former Tenant tried to fix the door by using spray paint to cover the damage. The Landlord stated that the spray paint used was a different hue of white from the original paint on the door and the whole door needed to be repainted to repair this issue.
26. The Former Tenant disputes the Landlord's costs for cleaning the driveway. The Former Tenant's position is that the driveway needed to be cleaned regardless of any minor asphalt staining following his 9 years of occupancy and that the Landlord would be unjustly enriched if the Tenant were to be held responsible for the costs to clean the driveway.
27. The Former Tenant also disputed that he damaged the garage door and then used spray paint on the door to try and cover the damages. It was the Tenant's position any markings on the garage door were the result of regular wear and tear over the course of his tenancy.
28. I have reviewed the Landlord's submitted photos and invoice for the claimed damages to the driveway. The Landlord's submitted estimate for work required to clean the driveway describes treatment to "kill any organic growth (algae, mold, mildew)" and to "sweep polymeric sand" after the power wash is complete. The estimate makes no mention of cleaning or repair required due to asphalt staining. Furthermore, the photos submitted by the Landlord appears to show staining at the end of the driveway where it meets the road. I cannot be satisfied that this staining was not created by possible road work. Therefore, the Landlord has failed to prove, on the balance of probabilities, that the Former Tenant caused damage to the driveway due to willful or negligent actions of the Former Tenant.
29. I have also carefully reviewed the photos of the garage door provided by the Landlord. In my view, the marks on the garage door appear to be areas where the original paint has worn away from possible rubbing of the door against its opening mechanisms. Even if I am wrong on my analysis of the cause of the damage, I found no credibility issues with the Tenant's testimony that he did not damage, or spray paint the door. The Landlord assumed the damages were caused by the Tenant, but he had no evidence to substantiate that assumption. For these reasons, the Landlord has not satisfied me, on the balance of

probabilities that damages to the garage door were due to the willful or negligent actions of the Former Tenant.

Rent Deposit

30. The Landlord collected a rent deposit of \$1,200.00 from the Former Tenant and this deposit is still being held by the Landlord. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.
31. Interest on the rent deposit, in the amount of \$169.28 is owing to the Former Tenant for the period from December 1, 2014, to September 19, 2023.

It is ordered that:

1. The Former Tenant shall pay to the Landlord \$2,312.06, which represents rent and compensation owing up to September 19, 2023.
2. The Former Tenant shall also pay to the Landlord \$1,487.82, which represents the reasonable out-of-pocket expenses the Landlord incurred as a result of the unpaid utility costs.
3. The Former Tenant shall also pay to the Landlord \$768.19, which represents the reasonable costs the Landlord incurred as a result of the damage.
4. The Former Tenant shall pay to the Landlord \$201.00 for the cost of filing the application.
5. The Landlord owes \$1,369.28 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Former Tenant.
6. The total amount the Former Tenant owes the Landlord is \$3,399.79*. See Schedule 1 for the calculation of the amount owing.
7. If the Former Tenant does not pay the Landlord the full amount owing on or before January 18, 2026, the Former Tenant will start to owe interest. This will be simple interest calculated from January 19, 2026 at 4.00% annually on the balance outstanding.

January 7, 2026
Date Issued

Melissa Anjema
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.

* Refer to the attached Summary of Calculations.

Schedule 1
SUMMARY OF CALCULATIONS

Amount the Former Tenant must pay the Landlord:

Rent and Compensation Owing to September 19, 2023	\$2,312.06
Utility Costs	\$1,487.82
Damage Costs	\$768.19
Application Filing Fee	\$201.00
Less the amount of the last month's rent deposit	- \$1,200.00
Less interest on the last month's rent deposit	-\$169.28
Total amount owing to the Landlord	\$3,399.79