



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

**Citation:** Krebs v Shahein, 2026 ONLTB 1994

**Date:** 2026-01-09

**File Number:** LTB-L-049399-23-RV

**In the matter of:** D4, 279 WOODFIELD RD  
TORONTO ON M4L2W8

**Between:** Carolyn Krebs Landlord

**And**

Ali Shahein Tenant

**Review Order**

Carolyn Krebs (the 'Landlord') applied for an order to terminate the tenancy and evict Ali Shahein (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The application was resolved by order LTB-L-049399-23 issued on January 5, 2024. The original hearing took place by videoconference on December 19, 2023, and only the Landlord attended.

On March 12, 2024 the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 13, 2024 interim review order LTB-L-049399-23-RV-IN was issued, staying the order issued on January 5, 2024.

The request to review was heard by videoconference on March 28, 2024. Interim review order LTB-L-049399-23-RV-IN2 was issued April 5, 2024, granting the Tenant's request to review, and directing that the Landlord's application be heard *de novo* (anew).

On April 11, 2024, the Landlord requested a review of interim review order LTB-L-049399-23-RV-IN2.

On April 12, 2024 interim review order LTB-L-049399-23-RV-IN3 was issued, directing that a review hearing be held relative to the Landlord's request to review.

The Landlord's request to review was heard by videoconference on May 9, 2024. The Landlord's request to review was denied by interim review order LTB-L-049399-23-RV-IN4 issued May 28, 2024. Interim review order LTB-L-049399-23-RV-IN2 was confirmed and remained unchanged.

This application was heard *de novo* by videoconference on July 9, 2024, September 18, 2024, September 11, 2025, and December 5, 2025.

The Landlord and the Tenant attended the *de novo* hearing on each of these dates.

**Determinations:**

History

1. On July 13, 2022 the LTB issued an order relative to a Tenant application filed by the Tenant with respect to this tenancy in LTB file TST-08810-19. In this order, the Landlord was ordered to pay the Tenant a total of \$8,197.20 by July 24, 2022.
2. It was not contested that the Landlord did not pay this amount to the Tenant. The Tenant was therefore entitled to recover the amount by deducting \$300.00 from the rent for each month from August 2022 to April 2024, and \$146.70 from the rent for May 2024.
3. Order TST-08810-19 also required the Landlord to complete the following work/repairs/replacements by August 13, 2022:
  1. Repair or replace the bathroom floor;
  2. Repair or replace the kitchen floor;
  3. Repair or replace the bathroom window;
  4. Repair or replace the tile/leak in the shower wall;
  5. Provide the Tenant with a mailbox; and
  6. Hire a pest control contractor to begin eliminating the rodent infestation in the rental unit and the residential complex.
4. The order also contained a provision permitting the Tenant to deduct 20% (\$115.89) from the rent each month beginning in September 2022 until the work is complete, if the work described at paragraph 3 above was not completed by August 13, 2022, as ordered.
5. Finally, the order contained a provision prohibiting the Landlord from giving the Tenant a notice of rent increase until all the work described in paragraph 3 above was complete.
6. The monthly rent at the time order TST-08810-19 was issued (July 13, 2022) was \$579.45 (see paragraph 53 of order TST-08810-19).
7. Order LTB-L-049399-23, issued on January 5, 2024 was a voidable order, terminating the tenancy and evicting the Tenant unless he paid all arrears and costs determined to be owing in that order (\$10,345.38) by January 16, 2024. Order LTB-L-049399-23 did not account for the amounts owing to the Tenant under order TST-08810-19.

8. By the time the Tenant requested a review of order LTB-L-049399-23, he had already been evicted pursuant to that order. The eviction was enforced on February 8, 2024.
9. At the end of the hearing on July 9, 2024, the Tenant informed the LTB that he did not wish to be restored to possession of the rental unit.
10. The Tenant initially raised issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act') in response to the Landlord's application about rent arrears. At the hearing on September 11, 2025, the Tenant informed the LTB that he did not intend to proceed with the issues under section 82 of the Act because he had filed tenant applications addressing the same issues.

Order TST-08810-19

11. I must first determine if and when the work described at paragraph 3 above was complete. This will inform when the Landlord was entitled to increase the rent by giving the Tenant (a) notice(s) of rent increase; what the lawful rent charged was during the relevant time; and for what period(s), if any, the Tenant was entitled to take an ongoing 20% rent abatement in accordance with order TST-08810-19.
12. I heard evidence from the parties relative to the repair issues identified in order TST-08810-19 at the hearing on December 5, 2025.
13. The Tenant's evidence was that the bathroom floor and shower wall repairs were complete by approximately December 2022 and mid-September 2022, respectively.
14. The Tenant's evidence was that the Landlord did some work on the kitchen floor, but the work was not completed properly and the floor remained in disrepair until he was evicted. A photo submitted by the Tenant of the floor that he took 2-3 weeks after the work on the kitchen floor was complete support the Tenant's assertion on this point (DOC-6888116). The tiles are not aligned and there is glue coming through the joints.
15. With respect to the bathroom window, the Tenant said that there was a crack in the window that was fixed, but the main issue was that the window could not be opened or closed, and this issue was not rectified up until the date the Tenant was evicted. In order TST-08810-19, the Member specifically wrote that the bathroom window would not open or close, though the broken glass had been replaced. The Tenant said there was no exhaust fan in the bathroom, so the ability to open and close the window was important. It is the "open/close" function of the window that the Landlord was required to repair pursuant to order TST-08810-19 (see paragraph 22 of order TST-08810-19)
16. The Tenant said he was not provided with a private mailbox. He said the superintendent would distribute mail to the Tenants after it was delivered to the building.
17. The Tenant also said that a pest control contractor never attended the unit, and mice and bed bugs remained an issue until the day he was evicted. He entered as evidence a number of photos taken between May 2022 and February 2024, during which time he said he was catching mice in the unit on an almost daily basis (DOC-6888147). These 16 photos depict mice caught in various traps in the rental unit during this period. He also

entered as evidence a video and photos of bugs in the rental unit. He said the video and photos were taken in early 2023 (DOC-6888159 & DOC-6888154)

18. The Landlord's evidence was that by the time of the hearing in file TST-05510-19 all the issues described in paragraph 3 above had been addressed. She presented photos that she said she took in November and December 2019.
19. The photos the Landlord presented include three of kitchen flooring that appears to be in a state of good repair (DOC-6357450, DOC-6357444, & DOC-6357533)
20. With respect to the bathroom window, the Landlord said the Tenant had nailed the window shut, and the Landlord removed the nail, after which it did open and close. She presented a photo of the window, but in it the window is closed (DOC-6357522).
21. Consistent with the Tenant's evidence, the Landlord's evidence was that the shower wall and bathroom flooring work was complete, though the Landlord maintained it was done before the hearing for TST-08810-19 (Landlord's photos at DOC-6357369, DOC-6357402, & DOC 6357366).
22. The Landlord entered photos of a mailbox on the wall in the hallway outside the rental unit (DOC-6888184 & DOC-3307712). She said the mailbox has been there since 2018. It has a padlock, which the Landlord said only the Tenant had a key for, and a slot at the top for mail to be inserted. She said that at this building, the mail carrier goes door to door deliver mail to the mailboxes outside the units, and mail is not distributed by the Superintendent.
23. The Landlord challenged the Tenant's evidence about there being a pest control issue in the unit. She said she could tell that the photos of mice caught in traps presented by the Tenant were not taken in the unit, because the flooring in the photos was different. She did not present any evidence that she retained a pest control contractor at any time.
24. The Landlord also noted that in a January 17, 2023 email from a Municipal Standards Officer that was presented by the Tenant, the Officer mentions several issues that the Tenant showed her when she attended the unit, but the issues identified in paragraph 3 above are not referenced (DOC-6888207, p. 10). Neither party requested a summons for the Municipal Standards Officer to attend the hearing.
25. Given that the Landlord's position directly contradicts the factual determinations in a final and binding order of the LTB, I informed the Landlord of my concern that her position may amount to an impermissible collateral attack on order TST-08810-19, and taking these positions may also be barred by the doctrine of *issue estoppel*. I asked her if she had any evidence or photographs relative to these issues from any time after order TST-08810-19. She said she did not.
26. The Landlord said that after order TST-08810-19 was issued she tried to enter the unit twice in accordance with notices of entry, but was denied access. She did not present a copy of any notice of entry.
27. The doctrine of collateral attack prevents a party from undermining previous orders issued by a court or tribunal of competent jurisdiction:

“Generally, it is invoked where the party is attempting to challenge the validity of a binding order in the wrong forum, in the sense that the validity of the order comes into question in separate proceedings when that party has not used the direct attack procedures that were open to it (i.e., [request to review,] appeal or judicial review). In *Wilson v. The Queen*, 1983 CanLII 35 (SCC), [1983] 2 S.C.R. 594, at p. 599, this Court described the rule against collateral attack as follows:

It has long been a fundamental rule that a court order, made by a court having jurisdiction to make it, stands and is binding and conclusive unless it is set aside on appeal or lawfully quashed. It is also well settled in the authorities that such an order may not be attacked collaterally — and a collateral attack may be described as an attack made in proceedings other than those whose specific object is the reversal, variation, or nullification of the order or judgment.”

*Garland v. Consumers’ Gas Co.*, 2004 SCC 25 (CanLII), para 71

28. The Landlord’s position amounts to an impermissible collateral attack on order TST-08810-19. It is an attempt to undermine the findings made in, and therefore the validity of, order TST-08810-19. It is an attempt to nullify at least parts of the order, including the requirement that work be carried out, the prohibition against rent increases until the work was complete, and the Tenant’s right to take an ongoing rent abatement until the work was complete.
29. The doctrine of *issue estoppel* applies the preclude re-litigation of issues already determined in previous litigation. The application of *issue estoppel* requires three preconditions to be met:

- a) The issue must be the same issue decided in a prior decision of a court or tribunal of competent jurisdiction;
- b) The prior judicial decision must have been final; and
- c) The parties to both proceedings at issue must be the same, or their privies:

*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63 (CanLII), para 23 [‘*C.U.P.E., Local 79*’]; *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44 (CanLII), para 25 [‘*Danyluk*’]

30. The position taken by the Landlord is also barred by the doctrine of *issue estoppel*. These same issues were already litigated and determined in a prior final decision of the LTB, and the parties to that proceeding were the same.
31. *Issue estoppel* is a branch of the doctrine of *res judicata*. Even where a branch of *res judicata* is made out, the court or tribunal “... must still determine whether, as a matter of discretion, [the *estoppel*] ought to be applied: *Danyluk*, *supra*, para 33.

32. In court proceedings, this discretion is limited in application, but "... the discretion is necessarily broader in relation to the prior decisions of administrative tribunals because of the enormous range and diversity of the structures, mandates and procedures of administrative decision makers": *Danyluk, supra*, para 62.
33. The doctrine of *res judicata* "... is designed as an implement of justice, and a protection against injustice. It inevitably calls upon the exercise of a judicial discretion to achieve fairness according to the circumstances of each case": *Danyluk, supra*, para 63, citing *British Columbia (Minister of Forests) v. Bugbusters Pest Management Inc.* (1998), 1998 CanLII 6467 (BC CA), para 32.
34. The exercise of this residual discretion is case-specific, and depends on the circumstances of the given case. In deciding whether to exercise my residual discretion, I must consider whether there is "... something in the circumstances of this case such that the usual operation of the doctrine of [*issue estoppel*] would work an injustice": *Danyluk, supra*, para 63, citing *Schwenke v. Ontario*, 2000 CanLII 5655 (ON CA), paras 38 and 43.
35. In my view, there is nothing in the circumstances of this case such that the operation of *issue estoppel* would work an injustice. Although the Landlord was not present at the hearing for TST-08810-19, there were direct attack procedures available relative to order TST-08810-19 (review and/or appeal). The Landlord's evidence presented before me was not presented at the hearing of TST-08810-19, but it is not fresh evidence in that the evidence was available at the time of that hearing.
36. The Landlord also had the opportunity at the hearing before me to present evidence of work done, inspections done, and/or the state of repair of the unit *after* order TST-08810-19 was issued, but did not. I do not accept the Landlord's evidence that she was prevented from doing so because the Tenant refused entry. Not only was there no copy of any notice of entry presented, there was also no evidence that the Landlord took any steps to address a refusal, such as service of an N5 notice. Additionally, there was no evidence that the Landlord took any steps at all to address the issues identified in order TST-08810-19. For example there was no evidence that the Landlord retained a pest control contractor, even to inspect the unit. Further, to exercise my residual discretion not to apply *issue estoppel* would be to permit an impermissible collateral attack on the findings in order TST-08810-19, as described above.
37. The Tenant's evidence was clear, convincing, and cogent, and I preferred his evidence over that of the Landlord. I do not accept the Landlord's evidence that directly contradicts the findings in order TST-08810-19 for the reasons described above, and she did not present any cogent evidence that any work was attempted or completed after order TST-08810-19 was issued.
38. The Tenant acknowledged that some of the work was completed after the August 13, 2022 deadline, but maintained that some was not. I find that the Landlord failed to repair the open/close function on the bathroom window, failed to effectively repair or replace the kitchen flooring, and failed to retain a pest control contractor to address the issues with mice and bugs in the unit and residential complex, as required by order TST-08810-19.
39. These issues all remained outstanding until the Tenant was evicted on February 8, 2024.

40. Pursuant to the terms of order TST-08810-19, the Landlord was therefore not entitled to give the Tenant a notice of rent increase after that order was issued, and the lawful monthly rent remained \$579.45 until the tenancy ended. The Tenant was also entitled to take an ongoing 20% rent abatement each month from September 2022 until the tenancy ended. The Tenant was also entitled to deduct \$300.00 per month from the rent beginning in August 2022 to recover the \$8,197.20 that the Landlord was required to pay the Tenant pursuant to order TST-08810-19.

#### Rent Arrears

41. The Tenant was in possession of the rental unit on the date the application was filed on June 22, 2023.

42. The Tenant vacated the rental unit on February 8, 2024 when he was evicted pursuant to order LTB-L-049399-23 issued on January 5, 2024, before the Tenant had requested a review or a stay on that order was in place. Rent arrears are calculated up to the date the Tenant vacated the unit

43. The lawful rent was \$579.45. It was due on the 1st day of each month.

44. The parties agreed that there were no rent arrears as of August 2022. The Landlord claims in the application that the rent arrears started accumulating in September 2022. The Landlord claims that the lawful rent was \$586.40 at the time and increased to \$601.06 as of January 2023, but this is not correct given the finding in TST-08810-19, and the fact that the Landlord was prohibited from giving the Tenant a notice of rent increase thereafter. As noted above, the lawful rent remained \$579.45 from the time order TST-08810-19 was issued until the end of the tenancy.

45. The Landlord claims the Tenant did not pay any rent from September 2022 until the application was filed on June 22, 2023. The Landlord does not account in the application for the monthly 20% rent abatement (\$115.89) the Tenant was entitled to take beginning in September 2022, or the \$300.00 per month he was entitled to deduct to recover the amount owing from order TST-08810-19.

46. The total lawful rent charged from September 2022 to June 2023 was \$5,794.50 (10 months x \$579.45). The Tenant was entitled to a rent abatement of \$1,158.90 for this period (10 months x \$115.89), and was entitled to deduct \$3,000.00 from rent payments for this period (10 months x \$300.00). The Tenant was also entitled to deduct \$300.00 from the rent for August 2022 pursuant to order TST-08810-19.

47. This reduces the balance owing as of the application filing date to \$1,335.60 if the Tenant made no other payments, as the Landlord claims (\$5,794.50 - \$1,158.90 - \$3,000.00 - \$300.00).

48. The Tenant said he paid rent for September and October 2022 by cheque and money orders, respectively. He did not present documentary evidence, such as copies of the cheque or money orders, or banking records to support these assertions. He said he had proof of these payments, but the documents were left in the unit when he was evicted. He did refer to a page that was attached to one of the Landlord's L1/L9 update sheets (DOC-

6306478, p. 35. He noted that the Landlord's calculation of rent charged started in October 2022, and he said that is because he had paid the rent for September 2022.

49. This page was from an update sheet filed by the Landlord on May 7, 2024 (DOC-3289093, DOC-3289102, & DOC-3289117). It is accurate that in this update sheet, the Landlord lists all rent she claimed was owing, and did not specifically list any rent charged from September 2022. However, it appears that the update sheet was a calculation of the rent that came due after the N4 notice was served in September 2022, as opposed to from when the application was filed. The total arrears claimed in the update sheet appear to have been inaccurately identified as \$14,997.14 because of this error (it appears to have effectively accounted twice for rent charged in each month from October 2022 until the application was filed in June 2023). This was an improperly completed update sheet, but I do not find it to be an implicit admission that the rent for September 2022 was paid.
50. In the absence of any documentary evidence to support the Tenant's assertion that he made rent payments in September and October 2022, on a balance of probabilities I find that those payments were not made.
51. The Tenant said that in addition to payments for September and October 2022, he paid \$579.45 for rent each month thereafter, but did not present documentary evidence to support this assertion, except for two payments of \$579.45 in January and February 2024, for which he presented bank records. The Landlord also confirmed that these two payments were made.
52. Given the absence of documentary evidence to support the Tenant's assertion that he made any rent payments from November 2022 to December 2023, I find on a balance of probabilities that these payments were not made. The Tenant said that his evidence relative to previous payments were lost because they were left in the unit when he was evicted, but it was not clear why he could not attend the bank to obtain records of any of these payments, as he did for the January and February 2024 payments.
53. I therefore find that the rent arrears owing to June 30, 2023, as of the application filing date, were \$1,335.60.
54. From July 2023 to January 2024 lawful rent was charged in the amount of \$4,056.15 (7 months x \$579.45). During this period, the Tenant was entitled to a rent abatement of \$811.23 (7 months x \$115.89). He was also entitled to deduct \$2,100.00 from the rent owing for this period (7 months x \$300.00). He also paid \$579.45 in rent for January 2024. The additional arrears owing for this period are therefore \$565.47 (\$4,056.15 - \$811.23 - \$2,100.00 - 579.45).
55. The Tenant also owed rent for the first 8 days of February 2024, up to the day he was evicted and the tenancy ended. The daily rate is \$19.05 (\$579.45 x 12 months, divided by 365 days). The Tenant therefore owed \$152.40 for 8 days in February (8 days x \$19.05), and paid \$579.45 for this month. This means the Tenant had a credit balance of \$427.05 for February 2024. This amount is deducted from the arrears owing.
56. The total rent arrears the Tenant owed to the end of the tenancy are therefore \$1,474.02 [\$1,335.60 (up to June 30, 2023) + \$565.47 (July 1, 2023 to January 31, 2024) - \$427.05 (credit for February 2024)].

57. The Landlord collected a rent deposit of \$601.06 (this amount includes interest owing on the deposit used to top up the deposit up to December 31, 2022) from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$16.59 is owing to the Tenant for the period from January 1, 2023 to February 8, 2024. The rent deposit and interest owing on it, totalling \$617.65, is applied to the arrears of rent because the tenancy terminated.
58. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs because there were arrears owing when the application was filed.
59. The total amount owing to the Landlord for rent arrears and costs to the end of the tenancy is \$1,042.37 (\$1,474.02 + \$186.00 - \$617.65).
60. As noted above, the Landlord was ordered to pay the Tenant \$8,197.20 pursuant to order TST-08810-19. The calculations above account for the \$300.00 per month deduction from the monthly rent the Tenant was entitled to take for the months August 2022 to January 2024, totalling \$5,400.00 (18 months x \$300.00).
61. This leaves \$2,797.20 owing by the Landlord under order TST-08810-19 (\$8,197.20 - \$5,400.00). Since the tenancy is terminated, it is appropriate to apply the amount still owing to the Tenant under order TST-08810-19 to the amount owing by the Tenant for rent arrears.
62. The amount the Landlord owes the Tenant exceeds the amount the Tenant owes the Landlord by \$1,754.83. The Tenant does not owe the Landlord any money. A total of \$6,442.37 that was owing to the Tenant pursuant to order TST-08810-19 has been applied against the rent, rent arrears, and costs owed by the Tenant.

**It is ordered that:**

1. Order LTB-L-049399-23 issued on January 5, 2024 is replaced by the following:
2. The tenancy between the Landlord and the Tenant is terminated as of February 8, 2024, the date the Tenant moved out of the rental unit.
3. The Tenant does not owe the Landlord any money for arrears of rent.
4. \$6,442.37 of the \$8,197.20 owing to the Tenant pursuant to order TST-08810-19 has been applied against the amount owing by the Tenant in this order. This order does not account for any interest that may be owing on any balance outstanding in order TST-08810-19.

**January 9, 2026**  
**Date Issued**

---

**Mark Melchers**  
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.