



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

Citation: Kiya Investment Corp. v Fitzpatrick, 2025 ONLTB 91842

Date: 2026-01-08

File Number: LTB-L-093468-24-RV

In the matter of: B, 16024 SIMCOE ST
PORT PERRY ON L9L1S7

Between: Kiya Investment Corp. Landlord

And

Jessica Fitzpatrick Tenants
Lucy Kowalska

Kiya Investment Corp. (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Fitzpatrick and Lucy Kowalska (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-093468-24 issued on March 20, 2025, as amended on April 10, 2025.

On July 9, 2025, the Tenants requested a review of the order. The Tenants alleged that there is a serious error in the order and that they were not reasonably able to participate in the proceeding.

On July 10, 2025, interim order LTB-L-093468-24-RV-IN was issued, staying the amended order issued on April 10, 2025.

Following a hearing on July 30, 2025, order LTB-L-093468-24-RV-IN was issued on August 7, 2025, granting the Tenants' request. The application was adjourned for a new hearing to be held at a future date.

This application was heard by videoconference on September 17, 2025, and November 25, 2025. The Landlord's Agents, A. Flannery (AF), and L. Dutt (LD), the Landlord's Legal Representative, E. Steiman, and the Tenants attended the hearing. The Landlord's witness, D. Tam (DT), also attended the hearing.

Preliminary Issue:

The parties disputed the date on which the tenancy terminated. While the Landlord claimed it terminated on December 31, 2024, due to improper notice of termination, the Tenants asserted that they vacated the unit on November 30, 2024, after accepting the Landlord's offer to terminate the tenancy.

There was no dispute that on August 2, 2024, the Landlord's Agent sent an email to the Tenants offering an early termination and to advise accordingly. The Tenants did not respond to this offer until October 31, 2024, when they gave the Landlord an Agreement to End the Tenancy (N11) with a termination date of November 30, 2024. The Landlord rejected the notice of termination which the Tenants did not provide earlier because they were dealing with health issues and other circumstances.

The Tenants did not provide a response to the Landlord's offer of early termination in a timely manner and that failure is detrimental to the Tenants because I do not find it unreasonable for the Landlord to revoke the offer over 60 days after it was made.

In order for the Tenants to terminate the tenancy, they had to give a notice of termination under section 47 of the *Residential Tenancies Act, 2006* ('the Act') which states that a Tenant who intends to terminate a yearly tenancy or a tenancy for a fixed term, shall give a Notice of Termination to the Landlord at least 60 days before the date the termination is specified to be effective and that date shall be on the last day of a rental period of the tenancy. In this case, the effective date of a Notice of Termination given on October 31, 2024, is December 31, 2024.

As the Tenants moved out of the rental unit without first giving a valid Notice of Termination, they terminated the tenancy in a manner that is not in accordance with the Act. Therefore, they are liable for the rent for the months of November 2024 and December 2024.

Determinations:

1. The Landlord filed this Application to Collect Rent the Tenant Owes alleging that the Tenants failed to pay the rent in November 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on November 30, 2024. However, based on my finding above, rent arrears are calculated up to December 31, 2024.
4. The lawful rent was \$2,550.00, due on the first day of each month.
5. The Tenants paid \$2,733.70 to the Landlord since the application was filed. This amount was garnished from the Tenants' wages.
6. The rent arrears owing to December 31, 2024, are \$2,366.30.
7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 82 Issues

8. The Tenants raised two issues pursuant to section 82 of the *Residential Tenancies Act, 2006* ('the Act') which provides that the LTB shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act.

Tenant's Evidence

9. The Tenants testified that they observed mold in the rental unit on June 24, 2024, and it was visible on furniture, baseboards, clothing, shoes etc. The Landlord was immediately informed and on June 25, 2024, an agent of the Landlord attended the rental unit and claimed that there was no mold in the unit. He later returned to the unit on the same date and changed his claims.
10. On June 26, 2024, another worker attended the unit for a routine check.
11. On June 28, 2024, the Landlord informed the Tenants that there was no mold in the unit and that the unit was liveable. The Tenants stated that they were ill from the mold contamination in the unit.
12. On July 3, 2024, a technician discovered that the heat recovery ventilator for the unit, HRV, was not properly installed in February 2024, and turned it on.
13. Between July 9 – 18, 2024, the mold continued to spread in the unit, and the Landlord's contractor attended the unit to measure the humidity and to clean the baseboards.
14. After July 18, 2024, the Tenants felt harassed by the Landlord's numerous visits as they were made only to measure the humidity levels in the unit. The Tenants who felt sick due to the mold, presented pictures taken of the unit between July and August 2024 showing mold at the bottom of a dresser, a headphone, a drawer, clothing, bags, and on the baseboard.
15. The Tenants also presented as evidence a laboratory analysis dated July 30, 2024, which indicated there was mold in a bedroom, and argued that the Landlord did not follow the recommended steps to remediate for the specific type of mold.
16. The Landlord also placed dehumidifiers in the rental unit which the Tenants found noisy as they were industrial grade and disrupted normal conversation.
17. The Tenants argued that the Landlord entered the rental unit illegally without serving a proper notice of entry on the following dates:
 - a. July 3, 2024 – given for entry on the same date
 - b. July 8, 2024 at 11:00 a.m. – given for July 9, 2024, for entry between 10:00 a.m. and 2:00 p.m.
 - c. July 10, 2024 at 3:12 p.m. – given for same day entry between 3:30 p.m. and 5:30 p.m.
 - d. July 19, 2024 at 8:16 p.m. – for July 20, 2024 entry between 10:30 a.m. and 12:30 p.m.
 - e. July 27, 2024 at 12:19 p.m. – for July 28, 2024 entry between 10:00 a.m. and 2:00 p.m.

- f. July 30, 2024 at 10:40 a.m. – for July 31, 2024 entry between 10:00 a.m. and 12:00 p.m.
- g. August 13, 2024 at 10:46 a.m. – for August 14, 2024 entry between 10:00 a.m. and 12:00 p.m.
- h. August 18, 2024 at 11:18 a.m. – for August 19, 2024 entry between 10:00 a.m. and 12:00 p.m.
- i. September 3, 2024 at 1:04 p.m. – for September 4, 2024 entry between 12:00 p.m. and 4:00 p.m.

18. On cross examination, the Tenants were unsure if they consented to the entry on July 3, 2024, and acknowledged that while they may have given oral consent on July 10, 2024, the other entries were illegal.

Landlord's Evidence

19. The Landlord's Agent, AF, testified that on June 25, 2024, when they initially visited the rental unit, they were unaware that the Tenants had moved some items into the garage hence, they initially believed there was no mold in the unit. Later that day, the Tenants showed the Landlord the items in the garage.

20. AF provided the following timeline of events:

- a. June 26, 2024 – the Landlord dropped off dehumidifiers in the rental unit
- b. July 3, 2024 – verbal consent obtained from the Tenants prior to entry as seen in an email provided by the Landlord.
- c. July 9, 2024 – entry into the unit to monitor humidity levels
- d. July 10, 2024 – the Tenants complained about the noise from the dehumidifier, and the Landlord obtained verbal consent for a HVAC specialist to visit. For record purposes, the Landlord served a Notice of Entry despite receiving the verbal consent.
- e. July 11, 2024, July 13, 2024, and July 17, 2024 – mold was found on the baseboards and treated accordingly.
- f. July 18, 2024 – restoration specialists looked in the walls of the unit with infrared cameras and concluded there were no moisture. The Landlord observed that the Tenants were not sufficiently running the dehumidifier
- g. July 19, 2024 – the Landlord brought in a new dehumidifier to replace one that was not functioning properly
- h. July 20, 2024 – the Tenants reported that the new dehumidifier leaked, and the Landlord had it replaced
- i. July 23, 2024 – mold testing was conducted and two areas with mold were identified behind the baseboards
- j. July 24, 2024 – Tenants complained about the dehumidifier causing the Landlord to attend to monitor the humidity levels
- k. July 28, 2024 and August 6, 7, 8, 12, 14, 16 and 19, 2024 – the Landlord entered the unit to check the humidity levels, monitor for mold and ensure the dehumidifier was plugged
- l. August 21, 2024 – the baseboards were removed, cleaned, and replaced

- m. August 23, 2024 – the commercial dehumidifiers were replaced with a residential dehumidifier, and based on the Landlord's records, there was no mold observed in the unit
 - n. September 12, 2024 – the Tenants were reimbursed for the costs associated with the use of the dehumidifiers
 - o. September 13, 2024 – the humidity levels were normal/ stable
21. The Landlord's Agent, LD, reiterated in his testimony that mold was only observed in the baseboards. The dehumidifiers were placed in the unit and the Landlord followed the recommendation of the mold specialist and resolved the issue.
22. The specialist, DT, testified that he visited the rental unit on July 23, 2024, for a visual inspection and moisture content reading and took samples. He observed the mold growth in the baseboards of one of the bedrooms in the unit, and on items in the garage. He assessed the level of remediation required as level one, and recommended removal of the baseboards and surface cleaning as level one is not much of a concern. The Landlord presented a copy of the mold assessment.

Analysis

23. Section 20 (1) of the *Residential Tenancies Act, 2006* provides that a Landlord is responsible for providing and maintaining a residential complex, including the rental units in it, in a good state of repair and fit for habitation and for complying with health, safety, housing and maintenance standards.
24. The Tenants have failed to demonstrate that the Landlord neglected this responsibility by failing to maintain the rental unit. Based on all the evidence, there is no dispute that mold was present in the rental unit and brought to the Landlord's attention on June 24, 2024. Following that, the Landlord immediately had the unit inspected twice on June 25, 2024, and afterwards set up dehumidifiers and monitored the humidity levels in the unit.
25. On July 18, 2024, the use of infrared cameras in the wall did not disclose moisture in the walls and on July 23, 2024, the Landlord carried out mold testing which disclosed the existence of mold in the baseboards.
26. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.
27. I find that the Landlord responded promptly to the mold concerns and while it is unfortunate that the Tenant's belongings were damaged by mold, the damage occurred prior to anyone's knowledge of the problem and the Landlord could not reasonably have prevented it. The Tenants appeared concerned about a disconnected HRV from February 2024, but the evidence did not disclose any negligence by the Landlord.
28. The mold specialists recommended removal of the baseboards, surface cleaning and the use of dehumidifiers. The evidence demonstrates that the Landlord followed the

recommendation and by August 23, 2024, no mold was detected in the rental unit. Therefore, based on the disclosed circumstances, the Landlord did not breach their maintenance obligations.

29. Regarding the claims of illegal entry, I find that on July 3, 2024, and July 10, 2024, the Tenants verbally permitted entry. On the other dates, while notices were served, they were shy of 24 hours. However, given the circumstances, I find this error by the Landlord tolerable because they did not enter the unit for nefarious reasons but were eager to resolve the complaints about mold.
30. The Tenants are not entitled to an abatement of rent based on their claims.
31. The Landlord collected a rent deposit of \$2,495.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
32. Interest on the rent deposit, in the amount of \$78.10 is owing to the Tenant for the period from October 1, 2023, to December 31, 2024.
33. The Landlord owes the Tenants \$20.80 because the amount of rent deposit and interest the Landlord owes on the rent deposit exceeds the amount owing by the Tenants.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of December 31, 2024.
2. The Landlord shall pay to the Tenants \$20.80. The Tenants owe the Landlord rent arrears to December 31, 2024, and the cost of filing the application. The amount of rent deposit and interest the Landlord owes on the rent deposit exceeds the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
3. If the Landlord does not pay the Tenants the full amount owing on or before January 19, 2026, the Landlord will start to owe interest. This will be simple interest calculated from January 20, 2026, at 4.00% annually on the balance outstanding.

January 8, 2025

Date Issued

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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.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$5,100.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$2,733.70
Less the amount of the last month's rent deposit	- \$2,495.00
Less the amount of the interest on the last month's rent deposit	- \$78.10
Total amount owing to the Landlord	\$(20.80)