



**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-090604-25

In the matter of: 2226 MARGOT STREET
OAKVILLE ON L6H3M7

Between: Elen Weger Landlord
Ingrid McKee

And

Madelaine West Tenant

And

Jason McKee Interested Party

Elen Weger and Ingrid McKee (hereafter collectively referred to as the 'Landlord') applied for an order to terminate the tenancy and evict Madelaine West (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on December 4, 2025.

The Landlord, the Tenant, and the Interested Party, attended the hearing.

Determinations:

Board's Jurisdiction

1. The following facts are agreed upon by the parties:

- Ingrid McKee (hereafter referred to as 'I.M') is one of the owners of the rental unit.
- Jason McKee (hereafter referred to as 'J.M') is the child of I.M.
- At the time that the Tenant moved into the rental unit, they did so with J.M, with whom they were married.
- During their occupancy of the rental unit, the Tenant and J.M were sharing communal areas of the rental unit, such as the kitchen and the bathroom.

2. J.M testified that they moved out of the rental unit no later than September 14, 2023.
3. The Landlord and the Tenant agree that J.M vacated the rental unit on September 14, 2023, and the Tenant and J.M have since separated. The Tenant continues to reside and occupy the rental unit with their children.
4. Section 5i) of the *Residential Tenancies Act, 2006* (hereafter referred to as the 'Act') reads as follows:

5 This Act does not apply with respect to,

(i) living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located.

5. Based on the undisputed evidence and submissions before, it is evident that the Act did not apply at the time that the Tenant moved into the rental unit, as they were occupying the rental unit with the Landlord's child (J.M), and sharing facilities, such as the kitchen and bathrooms, with them.
6. The first question before me is therefore whether the Act applies between the Landlord and the Tenant, as a result of J.M moving out.
7. In *Cowie v. Bindlish* 2010 ONSC 2628, the Divisional Court considered whether a landlord's intention to and subsequent move into a property after the start of a tenancy, such that the tenant was then required to share a bathroom and kitchen with them, could oust the application of the Act. The Court determined that the relationship between the landlord and tenant was characterized from the beginning of the tenancy and that a unilateral action could not change the terms of the tenancy.
8. In *SWL-17145-18 (Re)*, 2018 CanLII 88667 (ON LTB), the opposite situation to *Cowie* (i.e. whether a landlord moving out of a shared living situation would cause the Act to apply) was considered. The presiding member examined the Court's determinations in *Cowie* and held *Cowie* stood for the proposition that a unilateral action could not cause the Act to stop applying.
9. The presiding member in *SWL-17145-18* noted¹ that the Court in *Cowie* held:

[17] Any interpretation of section 5 (i) of the Act that would ... unilaterally cause the board to be deprived of its jurisdiction ... would be contrary to the language of the section and the intention of the Legislature and would be grossly unfair. It would also effectively result in an unwarranted revision of the tenancy agreement that the parties had made.
10. Furthermore, the presiding member, also noted that in *Cowie* the Court found that an interpretation which permitted a landlord to unilaterally remove a tenant's protection under

¹ *SWL-17145-18 (Re)*, 2018 CanLII 88667 (ON LTB), paragraph 19.

the Act would be inconsistent with the purpose of the Act to provide protection² for tenants from unlawful evictions.³

11. The presiding member found that the Act applied as of the date the landlord moved out and held this unilateral action was not an unwarranted revision that was unfair to the tenant but was instead a revision that reflected the reality of the living arrangements⁴. Importantly, and distinct from *Cowie*, the result was that the Tenant then gained the protection of the Act.
12. In *McKnight v. Kirk*, 2022 ONSC 3617, the Divisional Court considered both *Cowie* and *SWL-17145-18*, in addition to other cases. The Court held the law in *Cowie* had been correctly applied as the terms at the outset of the tenancy were examined and it was found the Act did not apply while the tenant was required to share a kitchen and bathroom with the landlord's daughter. However, they also held that the presiding member was alive to the issue that circumstances could change and the Act could begin to apply⁵. In so doing, the Court held that the application of section 5(i) of the Act turns on the facts in evidence before the Board.
13. Accordingly, I am satisfied that the Act applies to the tenancy as a result of J.M moving out of the rental unit and that therefore the Board has the jurisdiction to make determinations regarding the Landlord's application.

Status of Jason McKee

14. It is not in dispute that following their move out from the rental unit, J.M has not returned to reside or occupy the rental unit.
15. As I have found that the Act only applied as a result of J.M moving out of the rental, J.M does not meet the definition of a "tenant" under the Act.
16. Subsidiarily, subsections 87(1) and 87(1.1) of the Act read as follows:

87 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay arrears of rent if,

(a) the tenant or former tenant did not pay rent lawfully required under the tenancy agreement; and

[...]

87 (1.1) An application under subsection (1) may be made,

(a) while the tenant is **in possession** of the rental unit; or

(b) no later than one year after the tenant or former tenant **ceased to be in possession of the rental unit**. [Emphasis Added]

² Section 1 of the *Residential Tenancies Act, 2006*.

³ *SWL-17145-18 (Re)*, 2018 CanLII 88667 (ON LTB), paragraph 18.

⁴ *SWL-17145-18 (Re)*, 2018 CanLII 88667 (ON LTB), paragraphs 20 and 23.

⁵ *McKnight v. Kirk*, 2022 ONSC 3617 (CanLII), paragraph 28.

17. The Landlord filed the application on October 22, 2025.
18. While “possession” may be a difficult concept to define, it is now well established that “possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of or occupation of the unit.”⁶
19. J.M has not been in possession of the rental unit since the month of September 2023.
20. On the basis of the evidence and submissions before me, I find that J.M was not in possession⁷ of the rental unit at the time that the application was filed, and more than one year had elapsed since they ceased being in possession of the rental unit. Therefore, I find that the Board does not have the jurisdiction to order J.M to pay arrears of rent claimed by the Landlord through their application.
21. Accordingly, the application was amended⁸ to reflect Madeline West as being the sole Tenant and named respondent to these proceedings. J.M will therefore be referred to as an Interested Party. The style-of-cause was amended accordingly.

Arrears of Rent

22. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (the ‘N4 Notice’). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
23. As of the hearing date, the Tenant was still in possession of the rental unit.
24. The parties agree that the lawful monthly rent is \$1,000.00.
25. The Landlord and J.M testified that the rent is due on the first (1st) day of each month, as per the agreement formed prior to the J.M and the Tenant moving into the rental unit.
26. The Tenant testified that since they moved into the rental unit, there has been a tendency to have the rent paid on the twentieth (20th) day of each month, as it aligned with their reception of various subsidies.
27. Although there may have been an accepted practice that rent was paid on the twentieth (20th) of the month, I am satisfied, on a balance of probabilities, that the rent is due on the first (1st) day of each month. The testimony from the Landlord and J.M was consistent and credible in this regard. While the Tenant referenced recent communications between themselves, their father, and the Landlord, I do not find that such written communications amount to the parties ratifying a new tenancy agreement, as the basic elements of a tenancy agreement (such as but not limited to the commencement and duration of the new term and the actual date rent is due)⁹ and the Landlord’s actual consent to these terms were not reflected.

⁶ 1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA), paragraph 20.

⁷ Highfields Farm Corp. v. Francis, 2024 ONSC 6732.

⁸ Rule 1.6h) of the Board’s Rules of Procedure.

⁹ Fuamba et al. v. Irving et al., 2024 ONSC 4587

28. As such, based on the monthly rent, the daily rent/compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
29. The parties agree that the Tenant has paid \$1,000.00 to the Landlord since the application was filed.
30. The rent arrears owing to December 31, 2025, are therefore \$25,000.00.
31. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
32. There is no last month's rent deposit.

Relief From Eviction

33. The Landlord sought the termination of the tenancy due to the amount of the rent arrears.
34. The Landlord testified that they have a fixed income based on their pension and therefore rely on the rent payments from the Tenant in order to pay for the expenses related to the rental unit and the residential complex, including the maintenance, the utilities, and the property taxes. The lack of payment from the Tenant is therefore causing a financial strain on the Landlord, who also has expenses associated to their own residential accommodations.
35. The Landlord was amenable to postponing the termination of the tenancy to February 1, 2026.
36. The Landlord indicated that they have attempted, with the assistance of the Tenant's father, to negotiate with the Tenant an agreement including terms of payment for the Tenant's arrears. The relationship between the parties is fairly strained and the arrears of rent have continued to increase.
37. The Tenant testified that they currently occupy the rental unit with their four (4) minor children. Their children's learning institution is located in close proximity to the rental unit and is adapted to their needs.
38. The Tenant estimates their monthly household income to be around \$5,000.00 per month. They recognize that with their current expenses, "very little" of the income is left at the end of each month. They are considering starting legal proceedings in order to recover amounts from J.M that they believe they are entitled to.
39. The Tenant was not able to propose a repayment plan for the Board to consider. They were under the impression that J.M (despite their move out) would continue paying the monthly rent on behalf of the Tenant and do not currently have funds set aside to repay the arrears of rent.
40. The Tenant indicated that they are currently on a priority waiting list with *Halton Housing* and that their preference would be to continue occupying the rental unit until at least the end of the month of June 2025, in order to not impede on their children's school year.

Analysis

41. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, including whether the Landlord attempted to negotiate a repayment agreement with the Tenant, along with the length of the tenancy and the Tenant's payment history since the filing of the application, and find that it would not be unfair to postpone the eviction until February 28, 2026, pursuant to subsection 83(1)(b) of the Act.
42. The Tenant does not currently have the financial means to enter into a payment agreement as they do not have funds set aside, and have limited financial resources. While the Tenant intends to rely on the resolution of other legal proceedings to make payments to the Landlord, the date of the resolution of these proceedings, and their potential outcome are unknown to the Tenant.
43. Although the Tenant may have been under the impression that rent payments would be completed on their behalf, they had an obligation to ensure that the lawful monthly rent was indeed paid to the Landlord.
44. Since it appears that Tenant does not have the financial capability to continue the tenancy of their own accord, under their current circumstances, I find the Tenant's inability to pay the arrears of rent and the ongoing rent would result in additional prejudice to the Landlord; and given the substantial amount of arrears, I do not find it appropriate to grant further relief from eviction.
45. The delayed eviction date will allow the Tenant additional time to seek financial assistance in order to pay the arrears and continue the tenancy. In the alternative, the Tenant will have additional time to search for new housing accommodations for themselves and their family.
46. The Landlord should not have to further bear the burden of a Tenant's financial difficulties. As a result, I have terminated the tenancy in accordance with the terms set out below.
47. The prejudice to the Landlord is reduced as their mortgage obligations have already been paid in full and they were amenable to postponing the eviction; for which the extension is not prolonged.

Post-Hearing Submissions

48. The Landlord submitted unsolicited post-hearing submissions to the Board on December 9, 2025 (DOC-6960481). In view of procedural fairness, those were not read nor considered in arriving at my determination.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.

2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**

- \$26,201.00 if the payment is made on or before January 31, 2026. See Schedule 1 for the calculation of the amount owing.

OR

- \$27,201.00 if the payment is made on or before February 28, 2026. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after February 28, 2026, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before February 28, 2026.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$24,332.52. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting December 5, 2025, until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2026, at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before February 28, 2026, then starting March 1, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 1, 2026.

January 13, 2026
Date Issued

Alexandre Traboulsi
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 1, 2026, if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

Schedule 1
SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before January 31, 2026

Rent Owing To January 31, 2026	\$27,000.00
Application Filing Fee	\$201.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
Total the Tenant must pay to continue the tenancy	\$26,201.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before February 28, 2026

Rent Owing To February 28, 2026	\$28,000.00
Application Filing Fee	\$201.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
Total the Tenant must pay to continue the tenancy	\$27,201.00

C. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$25,131.52
Application Filing Fee	\$201.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$1,000.00
Total amount owing to the Landlord	\$24,332.52
Plus daily compensation owing for each day of occupation starting December 5, 2025	\$32.88 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	