



Order under Section 69 Residential Tenancies Act, 2006

Citation: STACEY v ATANASIO, 2026 ONLTB 10748

Date: 2026-02-05

File Number: LTB-L-054847-25

In the matter of: 18, 960 GLEN ST
OSHAWA ON L1J6E8

Between: CHERYL STACEY Landlord

And

JOHN ATANASIO Tenant

CHERYL STACEY (the 'Landlord') applied for an order to terminate the tenancy and evict JOHN ATANASIO (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also) applied for an order to terminate the tenancy and evict JOHN ATANASIO (the 'Tenant') because:

- the Tenant or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex (L2 application).

This application was heard by videoconference on January 28, 2026.

The Landlord, The Landlord's support Jeremy Stacey, the Landlord's witness Peter Burthwright, the Landlord's legal representative Erinn Deremo and the Tenant attended the hearing.

Determinations:

Preliminary Issue - Disclosure

1. The Landlord's representative said the Tenant did not comply with the terms of December 4, 2025 interim order as he did not pay rent to the Landlord as ordered.
2. I also note, the Tenant did not comply with the Member's interim order, instructing the Tenant to prepare and serve the issues he intended to raise as per s.82(1) of the Act and his evidence. Rather, the Tenant uploaded to the Tribunals Ontario Portal several documents not labelled and unorganized.

3. The Tenant said he believes he received the December 4, 2025 interim order but it may have been misplaced due to the volume of paperwork he has received. In my view, no reasonable explanation was provided with respect to the Tenant's non-compliance with payment of rent and disclosure. The Tenant was therefore not permitted to rely on his documentary evidence and this consequence was explained in the Member's interim order.
4. The Landlord's disclosure includes LTB documents, financial information, advertisements, reports, photographs, and various communications (DOC7194494).
5. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
6. The tenancy between the Landlord and the Tenant will be terminated February 28, 2026 under the L2 application for the N6 Notice of Termination. The tenancy will terminate notwithstanding payments made for the voiding of the L1 application for arrears of rent.

The Landlord's L1 Application

7. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (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.
8. As of the hearing date, the Tenant was still in possession of the rental unit.
9. The lawful rent is \$1,720.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$56.55. This amount is calculated as follows: $\$1,720.00 \times 12$, divided by 365 days.
11. The Tenant has not made any payments since the application was filed.
12. The rent arrears owing to January 31, 2026 are \$15,980.00.
13. The Tenant did not dispute the amount owing to the Landlord.
14. The Landlord said that she attempted to discuss the arrears of rent with the Tenant but the Tenant routinely provided excuses for non payment and failed promises to pay the rent owing.

The L2 Application – N6 Notice of Termination

15. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore the tenancy shall be terminated as detailed below.
16. On June 11, 2025, the Landlord gave the Tenant an N6 notice of termination alleging that the Tenant was selling fish out of the rental unit and this act is in violation of a municipal

by-law, the Fish and Wildlife Conservation Act, the Fisheries Act and the Fishery (General) Regulations.

The Landlord's Evidence

17. It was the testimony of the Landlord that around November 2024, while conducting a unit inspection she noticed a significant number of fish tanks in the basement of the rental unit. Specifically, she said there were around 10 to 14 large fish tanks. The Tenant told her that he ran both a fish rescue service and sells fish. The Tenant told her this was his hobby.
18. The Landlord said that around February 21, 2025, she became aware that the Tenant advertised his fish rescue and fish for sale business via Kijiji advertisements posted by the Tenant at the address of the rental unit. She noticed the ads sometime in December 2025.
19. During an inspection on February 23, 2025, the Landlord counted around 10 to 12 fish tanks in the basement of the unit. The Tenant again said he was running a not for profit rescue. However, this was contradictory to his ad related to the sale of fish.
20. The Landlord said that ad was recently removed from Kijiji a few days prior to the hearing.
21. On January 12, 2026, the Landlord received an email from the municipality's licensing standards examiner, citing the "home occupation" by-law 60-94 that prohibits the sale of "anything involving animals...done from a dwelling unit."
22. Additionally, the Landlord asserts that, by selling fish from the rental unit, the Tenant is in breach of s.51(1) of the Fish and Wildlife Conservation Act which strictly prohibits the sale of various fish from Ontario waters unless licenced to do so. Section 33 of the Fisheries Act states that the purchase, sale or possession of any fish that has been caught in contravention of the Act is prohibited. Section 35(2) of the Fishery Regulations provides that no person shall buy, sell, trade, barter or offer to buy any fish unless it was caught and retained under the authority of a licence issued for the purpose of commercial fishing.
23. The Landlord said the fish tanks have caused excessive moisture in the rental unit which has led to toxic mould, making the unit unsafe for residential purposes.
24. I note, the Landlord's application does not seek damages under s.89 of the Act.

The Landlord's Witness

25. The Landlord relied on the testimony of Peter Burthwright (PB) who is a certified mould remediation expert. He said that he attended the rental unit on December 16, 2025 where he conducted various tests.
26. PB said that there were elevated levels of two strains of mould that are toxic and leads to an unsafe living environment. PB reviewed various reports dated December 30, 2025.
27. PB did not state the mould was caused by the presence of the fish tanks. PB said the basement portion of the rental unit required remediation.
28. I understood the testimony of PB was related to potential consideration of relief under s.82 of the *Residential Tenancies Act, 2006*.

The Tenant's Evidence

29. The Tenant does not deny selling fish from the rental unit. He said that it similar to the sale of puppies or cats and does not believe this is in contravention of any municipal or other regulation.
30. The Tenant said that his fish rescue is a hobby and he only sells baby fish as a way of controlling his population. He does not make any profit from the sale of the fish.
31. The Tenant does not deny placing the Kijiji ad or the fact that he took the ads down days before this hearing.
32. The Tenant did not specifically challenge the various violations as presented by the Landlord.
33. The Tenant said that the excessive moisture in the rental unit was not caused by his fish tanks but by a broken toilet.
34. The Tenant said that both the Police and city by-law officers have attended the unit and he has not received any warning or penalties from them.

Law and Analysis

35. At the hearing, I explained that the N6 notice is non-voidable which means that the Tenant does not have the opportunity to correct the behaviour that gave rise to the N6 notice. I believe the legislature intended this type of application to be reserved for behaviour that could not be resolved by serving the Tenant a voidable notice of termination.
36. According to section 75 of the Act,

The Board may issue an order terminating a tenancy and evicting a tenant in an application under section 69 based on a notice of termination under section 61 whether or not the tenant or other person has been convicted of an offence relating to an illegal act, trade, business or occupation.

37. In my analysis, I considered the events that gave rise to the N6 notice as they relate to Guideline 9 which states:

The term "illegal" is not defined in the RTA but would include a serious violation of a federal, provincial or municipal law. If the illegality is trivial or technical, the act or business or occupation might not be considered serious enough to warrant eviction. An illegal act will be serious if it has the potential to affect the character of the premises or to disturb the reasonable enjoyment of the landlord or other tenants. The seriousness of this ground can be seen in the fact that there is no opportunity in section 61 for the tenant to avoid termination by rectifying the illegal act.

38. In my view, and based on the totality of the evidence presented, I am not satisfied the Landlord has proven, on a balance of probabilities that the Tenant has committed an illegal act with respect to the violations related to Fish and Wildlife Conservation Act, Fisheries Act and the Fishery Regulations. Overall, I find there is simply insufficient evidence to

arrive at a reasonable determination.

39. However, I am satisfied, on a balance of probabilities, that the Tenant sells fish from the rental unit and this is in contravention of the municipal by-law. While I understand the Licensing and Standards Examiner did not attend the hearing, I am satisfied that, based on his email of January 12, 2026, the sale of any animal is not permitted from a dwelling unit. The Tenant testified that he sells fish. This is in violation of the by-law.
40. Given the above, on the evidence before me and on a balance of probabilities, if find that the Tenant sells fish from the rental unit, as such, has committed an illegal act and this act occurred in the rental unit and this behaviour affects the character of the residential complex.

Daily Compensation and Rent Deposit

41. The Tenant was required to pay the Landlord \$11,932.05 in daily compensation for use and occupation of the rental unit for the period from July 2, 2025 to January 28, 2026.
42. Based on the monthly rent, the daily compensation is \$56.55. This amount is calculated as follows: \$1,720.00 x 12, divided by 365 days.
43. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
44. The Landlord collected a rent deposit of \$1,600.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$214.25 is owing to the Tenant for the period from October 1, 2018 to January 28, 2026.
45. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Relief from Eviction

46. The Tenant believes he can pay the arrears owing with a reasonable payment plan. He said that he has successfully won two law suits and is coming into significant money. He was unable to provide any further details with respect to the amount he expects to receive and payment date. No documentary evidence was led to support this claim.
47. At the hearing, a close examination of the Tenant's income and expenses was conducted. Based on the evidence before the Board and on a balance of probabilities, I do not find this to be a viable tenancy. The Tenant's job is seasonal in nature with no guaranteed income. He also receives government benefits at around \$700.00 per month. It seems that the Tenant can no longer afford to live in this rental unit. A payment plan in this circumstance, in light of the significant arrears is unreasonable. I considered that the Tenant failed to comply with the interim order to pay rent until the matter resolved by the LTB. It is unlikely that the Tenant will further comply with a payment schedule.
48. I also considered the length of the tenancy and the fact that the Tenant said he has no other housing options. He said his girlfriend lives at the rental unit and has income. I also considered they have made no good faith payments to the Landlord for several months.

49. With respect to the fish tanks, the Tenant said that he would consider removing a few of them but declined to remove his tanks from the basement. It seems to me more likely than not, that the Tenant will continue to sell fish from the rental unit. He does not appear to want to cooperate in an effort to preserve his tenancy.
50. I have also considered the high levels of toxic mould and the Landlord's responsibility to return the rental unit to a safe habitable condition. To prolong the termination of tenancy would be prejudicial to the Landlord.
51. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), 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.

The Landlord's Cost Request

52. At the hearing, the Landlord's representative asked for costs in the amount of \$700.00. The costs claimed related to the Tenant's non-compliance of the interim order and believes the Tenant has intentionally delayed the proceedings.
53. The Tenant does not believe costs are warranted in this circumstance.
54. At the hearing, I reviewed the LTB's Interpretation Guideline 3 with the parties. Having reviewed the general considerations for cost, I declined to award costs against the Tenant. I do not find the Tenant's conduct caused undue expense or delay. I accept that the Tenant failed to comply with the Interim Order. However, the Tenant explained that his non compliance was not intentional and he did not deliberately delay the proceedings.
55. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2026.
2. 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.
3. 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.
4. The Tenant shall pay to the Landlord **\$14,215.15**. This amount includes rent arrears owing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
5. The Tenant shall also pay the Landlord compensation of \$56.55 per day for the use of the unit starting January 29, 2026 until the date the Tenant moves out of the unit.

6. 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.

February 5, 2026

Date Issued

Dana Wren

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 as the tenancy is terminated

Rent Owing To Hearing Date	\$15,843.40
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$1,600.00
Less the amount of the interest on the last month's rent deposit	- \$214.25
Total amount owing to the Landlord	\$14,215.15
Plus daily compensation owing for each day of occupation starting January 29, 2026	\$56.55 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	