



Order under Section 69 Residential Tenancies Act, 2006

Citation: Amelin Property Management v Barker, 2026 ONLTB 11683

Date: 2026-02-09

File Number: LTB-L-074212-25

In the matter of: 1009, 22 CLOSE AVE
TORONTO ON M6K2V4

Between: Amelin Property Management Landlord

And

Donna Barker Tenant

Amelin Property Management (the 'Landlord') applied for an order to terminate the tenancy and evict Donna Barker (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on November 26, 2025.

The Landlord's Agent Michael Holzberg, the Tenant's Legal Representative, Nisha Iqbal and the Tenant attended the hearing.

Determinations:

1. The Tenant was in possession of the rental unit on the date the application was filed.
2. This is a month-to-month tenancy. Rent is due on the 1st of the month.

Persistent Late Payment

3. For the reasons that follow, I find that the Tenant has persistently paid rent late.
4. On September 3, 2025, the Landlord gave the Tenant an N8 notice of termination.
5. I find that the N8 notice is in compliance with the *Residential Tenancies Act, 2006* ('Act'); the notice was given at least 60 days before the termination date (November 30, 2025) and the termination was the last day of a rental period.

6. The Tenant's Legal Representative took the position that the L2 application aforesaid N8 notice should be dismissed for *Res Judicata*, as this matter had been litigated before.

Res Judicata - Issue estoppel

7. The doctrine of *res judicata* operates to ensure finality of decisions and prevent abuse of process. It stops a party from being able to seek another order on the same issue. In effect, it prevents a "second kick at the can". It has two aspects, issue estoppel and cause of action estoppel. The test for issue estoppel has three elements, which must all be present:

(1) the same question has been decided;

(2) the decision which is said to create the estoppel was final; and,

(3) that the parties to the prior decision were the same persons as the parties to the proceedings in which the estoppel is raised.

8. The Board has a residual discretion as to whether to apply the doctrine of *res judicata* even if all three of these criteria are satisfied. Further, *res judicata* or issue estoppel should not be applied in circumstances that would create an injustice.

9. The history of the proceedings was properly outlined by Member Priest in LTB-L-055382-25-SA as follows:

10. *The Landlord filed an L1 application on January 3, 2023, which resulted in the parties agreeing to a conditional order on consent (LTB-L-000178-23). This order set out the payment plan and also included the condition that the Tenant must pay the lawful monthly rent in full and on time for the period of June 2023 to March 2024. The Landlord subsequently filed an L4 Application alleging the Tenant had breached order LTB-L-000178-23 and an ex parte order was issued on June 27, 2023 (LTB-L-045838.23). The Tenant filed a motion to set aside the ex parte order which resulted in a conditional order issued on August 10, 2023 (LTB-L-045838-23-SA), in which a new payment plan was established and included the condition that the Tenant was to pay the lawful monthly rent in full and on time for the period of August 2023 to July 31, 2024, or until the arrears are paid in full, whichever date is earliest.*

11. *The Landlord filed another L4 application relating to file LTB-045838-23-SA on May 6, 2024, alleging the Tenant breached the order. On May 23, 2024, the Tenant filed a motion to set aside the order. At the hearing, the parties agreed to a conditional order and on August 15, 2024, order LTB-L-036418-24-SA-AM was issued. A new payment plan was established and included a condition that the Tenant must pay the lawful rent in full and on time for the period of August 2024 to October 2024. Although the Tenant filed a request to review the order, this order was upheld on review.*

12. *On October 30, 2024, the Landlord filed another L4 application relating to file LTB-L-036418- 24-SA-AM. As a result, order LTB-L-089097-24 was issued on November 14, 2024. On January 29, 2025, the Tenant filed a motion to set aside the order. A hearing*

was held on March 31, 2025. At the hearing, the parties agreed to a conditional order in which the Tenant would pay the lawful monthly rent in full and on time for the period of April 2025 to March 2026 (LTB-L-089097-24-SA). If any rent arrears were owing by the Tenant was not indicated in this order.

13. On July 7, 2025, the Landlord filed another L4 application and ex parte order LTB-L-055382- 25 was issued on July 14, 2025. On July 18, 2025, the Tenant filed a motion to set aside the order. The Tenant's representative submitted the outstanding arrears were paid in full by January 29, 2025.
14. After reviewing order LTB-L-089097-24-SA, I commenced a Board Initiated Review of the order on a Board motion. As explained to the parties, the LTB has the jurisdiction to hear applications as filed and has no discretion to hear an application not properly before the it.
15. The Landlord initiated these tenancy proceedings through an L1 application for arrears of rent, supported by an N4 Notice. Previous orders issued in this matter included both repayment plans and a condition requiring the rent to be paid in full and on time. However, order LTB-L-0890097-24-SA imposes only the latter condition. This represents a serious error, as the LTB lacks jurisdiction to impose conditions that fall outside the scope of the original application. Although both parties consented to the order, I find that the presiding Member did not have the jurisdiction to require the Tenant to pay rent in full and on time, given that the application was strictly for rent arrears.
16. As a result, the Tenant's motion shall be granted, and the order for eviction shall be cancelled.
17. I find that the question before me to determine in this application is whether the Landlord is barred from bringing this L2 application based on an N8 notice. I find the Landlord is not barred by *res judicata* from bringing this application, the original application was a L1 application for arrears, and the fact a consent order involved a condition of requiring the Tenant to pay rent on time in full when it was due, was a serious error, as the LTB lacked jurisdiction to impose conditions that fall outside the scope of the original application.
18. That error was remedied by the LTB, and certainly the Landlord cannot be punished from bringing this herein application to enforce its legal rights by the fact the LTB imposed conditions that were outside the scope of the original L1 application, as that would be a serious injustice against the Landlord.
19. The Landlord is not attempting to obtain a second kick at the can in regards persistent late payments by the Tenant, as the original application was for rental arrears.
20. I am not persuaded by the Tenant's Legal Representative's submissions on why the doctrine of *res judicata* should apply to this situation at hand.

21. Based on the Landlord's Agent's submissions and evidence, the Tenant had not paid rent when it was due from February 2024 to September 2025 (20 months). However, the Tenant has paid rent for October 2025 and November 2025 when it was due.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of said costs.

Relief from Eviction: Section 83 Considerations

23. The Landlord's Legal Representative submitted that the Board should refuse this application based on subsection 83(3)(c) of the act, the reason that this application being brought is that the tenant has attempted to secure or enforce her legal rights.
24. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true. Where, the evidence of the opposing party is as believable as that of the party bearing the burden of proof, that burden cannot be said to have been discharged.
25. No substantial documentary or oral evidence was adduced by the Tenant, nor the Tenant's Legal Representative either in part or taken in its entirety, suffices to meet the burden of proof upon the Tenant to demonstrate that the Landlord brought this herein application other than for the reasons sought in the L2 application as they pertain to persistent late payments. The timing of this application as submitted by the Landlord's Agent is simply to assert the Landlord's rights after the previous history of litigation, as abovementioned that lead to an erroneous consent which could not be enforced.
26. On the evidence before me, section 83(3)(c) is not engaged as on a balance of probabilities I do not believe the Landlord brought this herein application due to the fact the Tenant attempted to assert her legal rights. I am satisfied the Landlord was taking reasonable efforts to ensure the Tenant pay rent on time when due.
27. I have also 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 grant relief from eviction subject to the condition(s) set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
28. The Landlord's Agent submitted that the Tenant has been late for 20 consecutive months (February 2024 to September 2025), but since being served the N8 notice, and as of the date of this proceeding the Landlord has received the lawful rent payment on time for October 2025 and November 2025.
29. The Tenant testified that the tenancy should not be terminated. The Tenant testified regarding her current income and expenses, and her ability to pay rent on time when rent is due and sought a conditional payment order.
30. The Landlord's Agent submitted that the Landlord would not be oppose the same.

31. Based on the Tenant's evidence regarding her financial and personal circumstances, I am of the view that the Tenant will likely be able to pay rent in full and on time. I am of the view the Tenant should be given another opportunity to continue the tenancy provided she meets the conditions set out below, and that doing so would not be unfair. I make this finding for several reasons.

32. First, the Divisional Court has affirmed, on numerous occasions, that eviction is a remedy of last resort. To take just two examples:

Eviction should be ordered as a last resort after carefully considering Section 84 [now 83] of the Act (*Britannia Glen Co-operative Homes v. Singh*, cited in *Toronto Community Housing Corp. v. Thompson*, [2003] O.R.H.T.D. No. 145).

To put somebody out of their home must, in my view, call for clear and compelling circumstances that it is no longer possible for the arrangement to continue (*Langford v. Phipps*, [1992] O.J. No. 4184 (Ont. Gen. Div.)).

33. In other words, eviction should only be ordered if it is not possible to bring a tenancy back into good standing. In a case of persistent late payment, bringing the tenancy back into good standing is a simple matter of the Tenant starting to pay on time, which the Tenant should be given an opportunity to do so, therefore given this, it should be done rather than terminating the tenancy.

34. Second, compared to the other reasons a tenancy can be terminated, persistent late payment is a minor issue, in my opinion. In my view, it should not serve as a reason to terminate the tenancy unless it really cannot be remedied. Landlords are entitled to be paid on time, but eviction would be a serious consequence to a comparatively minor wrong.

35. Third, the prejudice to a landlord that results from a prompt payment order is minimal. The order ensures that the rent will immediately start to be paid on time. If any payment is late, the Landlord can obtain an eviction order under section 78 of the Act.

36. Finally, given the Tenant's long tenure in this tenancy, and the evidence submitted, it would seem the Tenant has the capacity and means to pay the rent on time, it is not appropriate in my view to terminate the tenancy and evict the Tenant where the Tenant seems to have this capacity.

37. I have considered all the evidence presented at the hearing and all of the oral testimony, although I may not have referred to each piece of evidence or referenced all of the testimony, I have considered it when making my determinations.

38. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Landlord's application for eviction of the Tenant is denied if the Tenant meets the condition below.
2. The Tenant shall pay the full monthly rent on or before the 1st day of each month, commencing March 1, 2026, and for 12 months thereafter up to and including February 1, 2027.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing in paragraph 4 on or before February 20, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 21, 2026, at 4.00% annually on the balance outstanding.

February 9, 2026
Date Issued

Panagiotis P. Roupas
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 of the Tenant expires on August 21, 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.