



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kowalczyk v Clayton, 2026 ONLTB 16446

Date: 2026-02-23

File Number: LTB-L-104821-25

In the matter of: Unit 2, 343 MITCHELL AVE
OSHAWA ON L1H2W2

Between: Edward Kowalczyk Landlord

And

Ashley Clayton Tenants
Lisa Caines

Edward Kowalczyk (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Clayton and Lisa Caines (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on February 18, 2026.

The Landlord, the Landlord's representative Maegan A. Mayer and the Tenants attended the hearing.

Determinations:

Preliminary Issue: Section 82 Issues

1. The Tenant raised section 82 issues by filing documents with the Board. She filed an 'Issues the Tenant Intends to Raise document', however it was not identified properly and appeared as one jpeg file among many others. The consequence is the Landlord and the did not see that document until shortly before the hearing.
2. Although the section 82 form is filled out, there is an absence of detail sufficient for the Landlord to respond. Two issues were beyond the limitation period allowable. All issues were stated baldly. As a result I found that the Tenant's section 82 issues were properly compliant with the Boards procedures and declined to admit them. However the Tenant has also filed a T2/T6 application which will give the opportunity to properly prepare her documents.
3. I did however admit a significant number of the Tenant's documents as they related to her section 83 submissions.

Preliminary Issue: Application Amendment

4. The parties agreed to amend the application to include the last month's rent deposit paid by the tenant to the Landlord.

L1 Application

5. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
6. As of the hearing date, the Tenant was still in possession of the rental unit.
7. The lawful rent is \$2,150.00. It is due on the 1st day of each month.
8. Based on the Monthly rent, the daily rent/compensation is \$70.68. This amount is calculated as follows: \$2,150.00 x 12, divided by 365 days.
9. The Tenant has not made any payments since the application was filed.
10. The Tenant disputed that amount of arrears owing because she states the Landlord unlawfully raised her rent in 2021. Although any amount of the rent increase in 2021 was unlawful because the guideline amount at the time was zero, the Tenant acknowledges having paid that amount for 12 consecutive months after the increase with no application to the Board contesting the unlawful rent increase during that time.
11. As a result I found that the rent increase was deemed not void pursuant to section 136 of the *Residential Tenancies Act, 2006* (the 'Act')
12. Accordingly, I find the rent arrears owing to February 28, 2026 are \$8,600.00.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
15. Interest on the rent deposit, in the amount of \$207.83 is owing to the Tenant for the period from May 1, 2020 to February 18, 2026.

Relief from Eviction

16. 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 April 30, 2026 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant Ashley Clayton ('AC') lives in the rental unit with her mother, the other Tenant and her two young daughters.

18. Both Tenants receive OW income and the AC also receives child tax benefit and student loan income. Based on the information provided by the AC her income time limited. Ontario works will be lost soon according to the AC. She and her mother are applying to ODSP although that amount is not confirmed, and her mother's application is not yet finalized. The Tenants' joint incomes are currently insufficient to pay the rent and expenses. I say this because the Tenant has had no change to her income yet failed the pay any rent from November to this hearing date.
19. The Tenant AC is currently in school studying to be a PSW. She receives semesterly installments of OSAP loans. AC's school ends in two weeks and although she points to large funds to be paid out, the documents supporting those funds are lacking in specifics to determine when or in what amount that payout will be. AC testified she is supposed to receive \$10,000.00 when she graduates but cannot guarantee on what date this would happen.
20. AC testified she will receive another OSAP payment when she starts a new education program in May. However no firm date was given for that amount either. The Tenants produced numerous documents supporting AC's schooling and I do not doubt them, but they are without the specifics needed to satisfy the prejudice to the Landlord.
21. The Tenants propose a voidable order with a delay to May so they can gather funds to pay the arrears. For the reasons below I find this unreasonable and unfair to the Landlord.
22. AC works part time earning minimal pay but she expects a new job to start shortly after her school ends. No evidence of what hours AC would work or her expected pay were provided. She plans to sleep little, work nights and go to school in the day. Although AC is confident she can manage the pace, I find it doubtful with her health issues that AC can reasonably not sleep for an extended period. Such a plan is unrealistic and likely to fail.
23. I have considered that if the Tenant pays the arrears and voids this order, it is unlikely the Tenant will have sufficient income to pay the rent in full and on time each month. It is not clear if March 1, 2026 rent will be paid, given non-payment by the Tenant since November.
24. Although AC testified she has always paid her rent, her payment history discussed below says otherwise.
25. The Landlord submitted that a previous application before the Board resulted in order LTB-L-064223-25 issued November 4, 2025, dealing with arrears of rent from September 2024 to October 31, 2025. The Tenants were ordered to pay \$9,460.00 in arrears and costs. Since that order was issued the Tenant has paid only \$600.00 to the Landlord and interest has been accruing. The total amount owing between that order and these arrears is \$18,246.00. The Tenants were given two opportunities to make good their debt and despite two N4 notices the Tenant has failed to pay anything. Further history, which was acknowledged by the Tenant was arrears generated in early 2024 which the Tenant paid in a lump sum.
26. While I accept that these new arrears were generated in part from the Tenant falling seriously ill and requiring surgery. The illness does not explain the arrears generated in September of 2024, before AC fell ill, nor the nonpayment of rent since November of 2025.

27. The Landlord provided evidence that he is a small landlord. He has a mortgage on this two-unit property, and without the Tenant's payments on time, he cannot make that mortgage payment as well as utilities and taxes, nor can he meet his maintenance obligations. He claims he would be prejudiced by any relief from eviction, especially given the high arrears and no good faith payments.
28. However, it is uncontested that the Housing Stability program agreed to pay 2 months of the Tenants' rent arrears, however the Landlord refused to respond to them. I have considered that the Landlord cannot claim prejudice if he is refusing sources of rental payment.
29. Balancing the interests of the Tenant and the Landlord it would be unfair grant the Tenant a postponement through May, 2026. However, I have considered the young children in the household, the potential for the Tenant to pay some of the arrears and find that a voidable order postponed to March 31, 2026 not unfair in the circumstances.

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:**
 - \$8,786.00 if the payment is made on or before February 28, 2026. See Schedule 1 for the calculation of the amount owing.
- OR**
- \$10,936.00 if the payment is made on or before March 31, 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 March 31, 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 March 31, 2026.**
 5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$5,700.41. This amount includes rent arrears owing up to the date of the hearing 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.
 6. The Tenant shall also pay the Landlord compensation of \$70.68 per day for the use of the unit starting February 19, 2026 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 March 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 31, 2026, then starting April 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 April 1, 2026.

February 23, 2026
Date Issued

Julie Broderick
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 October 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 February 28, 2026

Rent Owing To February 28, 2026	\$8,600.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$8,786.00

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

Rent Owing To March 31, 2026	\$10,750.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$10,936.00

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

Rent Owing To Hearing Date	\$7,722.24
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,000.00
Less the amount of the interest on the last month's rent deposit	- \$207.83
Total amount owing to the Landlord	\$5,700.41
Plus daily compensation owing for each day of occupation starting February 19, 2026	\$70.68 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	