



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-104336-25

In the matter of: 256 WILLOWBROOK DR EAST
WHITBY ON L1R2Z1

Between: Samantha Newcastle Landlords
Calvin Newcastle

And

Sophia Saniford Tenants
Janelle Burnett
Tahja Burnett-French

Samantha Newcastle and Calvin Newcastle (the 'Landlords') applied for an order to terminate the tenancy and evict Sophia Saniford, Janelle Burnett and Tahja Burnett-French (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's representative, Gathyayini Manharan, and Tenants Sophia Saniford ('SS') and Janelle Burnett ('JB') attended the hearing.

Preliminary Issue:

1. The Landlords' application (L1 application) is being heard pursuant to section 69 of the Residential Tenancies Act, 2006 (the 'Act') based on a notice given pursuant to section 59. This means that section 82 of the Act is applicable.
2. The Divisional Court has found that section 82 provides a tenant with the right to raise issues on an L1 application without bringing an application pursuant to subsection 29(1). The Act provides that the Board shall permit a tenant to raise any issue that could be the subject of an application made by the tenant if the tenant complies with the requirements set out in subsection 82(2).
3. As explained at the hearing, the Tenants did not advise the Landlords in writing prior to the hearing that they intend to raise issues. Specifically, the Tenants did not provide a description of the issue, when the issue started, when the issue was reported, whether the issue was resolved, and what the Tenants would like the Board to order for the issue.

4. While unclear, it appears the Tenants were unaware of what was required to raise issues at the hearing. I believe it would be prejudicial to the Landlords to allow the Tenants to raise issues under section 82. The Tenants may file their own application with the Board.

Determinations:

1. The Landlords 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$3,500.00. It is due on the 5th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The rent arrears owing to March 4, 2026 are \$17,500.00.
7. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlords collected a rent deposit of \$3,500.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. Interest on the rent deposit, in the amount of \$70.68 is owing to the Tenants for the period from March 5, 2025 to February 18, 2026.

Section 83 considerations

10. Subsection 83(3)(a) of the Act provides that the Board shall refuse an application for eviction where it is satisfied a landlord is in serious breach of their responsibilities under the Act. The Act does not define "serious breach".
11. The leading case of the Divisional Court which outlines the test for a "serious breach" is *Puterbaugh v. Canada Public Works and Government Services* [2005] O.J. No 5727. In that case, the court interpreted a "serious breach" in the context of a landlord's statutory duty to repair and maintain the rental unit. At paragraph 22, the Court stated that a "serious breach", in the context of the Landlord's maintenance responsibilities:

Means more than the rental premises being in poor condition and in need of significant work ... In short, a serious breach of the landlord's responsibilities is not established simply by the rental premise being in need of extensive repairs.

12. The purpose of subsection 83(3)(a) is to ensure landlords do not rely on an eviction of tenants as a means of circumventing their statutory obligations under the Act. That said, when addressing a tenant's arguments pertaining to a landlord's alleged breaches in that case, the Court went on to state: "To accept the Tenant's argument that all breaches of the Landlord's responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word 'serious' in that subsection."
13. In *Puterbough*, the Court held that the wording of subsection 83(3)(a) of the Act is in the present tense meaning that the serious breach must be ongoing at the time of the hearing before the Board, not in the past or potentially in the future, and the onus is on the tenant to prove this.
14. When I asked the Tenants to describe the most serious issue, they stated the mold in the garage. They testified that they reported a water leak in the garage and in the bedroom above the garage to the Landlord on/around October 2025. They indicated that the Landlords took no steps to address the leak, which they submit caused the mold in the rental unit.
15. The Tenants admitted into evidence an inspection report dated November 28, 2025. In the report, the inspector notes water damage and visible mold on the ceiling of the garage. The inspector noted that he believed the water damage was the result of a leakage from the balcony.
16. Also admitted into evidence was a mold inspection report dated December 1, 2025. The mold inspector assessed the mold on the garage ceiling and rated it as a "Condition 3 (actual growth)" noting that the ceiling was contaminated with the presence of actual mold growth and associated spores.
17. There is no question the Landlords did not know about the presence of mold on the garage ceiling. I say this because the Tenants acknowledged that they did not advise the Landlords of the result of the reports and did not provide them with a copy. The question is whether the Landlords ought to have known.
18. I agree that the Landlords failed to take appropriate steps in addressing the Tenants' concern of a water leak. The Landlords' representative submitted that the Landlords attended the property in October 2025 to assess the issues but took no further action as the relationship with the Tenants had deteriorated. In my view, this was unreasonable. It is clear the relationship deteriorated because the Tenants stopped paying the rent and I believe this is why the Landlords took no steps to address the maintenance concerns.
19. It is widely known that mold develops from damp and humid conditions. I believe it is more likely than not that the mold is the result of the water leak and that it would have been reasonably foreseeable that an unaddressed water leak would contribute to the development of mold. However, I am not convinced that the mold presents a health and safety concern.

20. There is no evidence before me to suggest that mold is present inside the home. The Tenants did not admit any evidence linking the presence of mold in the garage ceiling to any medical issues. Given this, I am unable to assess the extent of the issue to conclude the issue is serious. While I am satisfied there is mold on the garage ceiling and that the Landlords likely breached their obligations under subsection 20(1), I am not convinced this issue rises to the level of a serious breach to trigger mandatory refusal of eviction.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenants indicated that they intend to move from the rental unit and that they have not paid the rent because they have applied it to their savings for a first and last months rent for a new rental unit. SS stated that she was prepared to present a proposal to pay the arrears if the Landlords agreed to provide them with an abatement because of the maintenance issues. The arrears are substantial and given the Tenants have presented no plans to pay the arrears, I believe it would be overly unfair to grant any relief from eviction.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,686.00 if the payment is made on or before March 4, 2026. See Schedule 1 for the calculation of the amount owing.

OR

 - \$21,186.00 if the payment is made on or before March 8, 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 8, 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 8, 2026.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$12,226.30. 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 \$115.07 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 8, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 9, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before March 8, 2026, then starting March 9, 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 9, 2026.

February 25, 2026
Date Issued

Dawn Sullivan
Vice Chair, 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 9, 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 March 4, 2026

Rent Owing To March 4, 2026	\$17,500.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$17,686.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before March 8, 2026

Rent Owing To April 4, 2026	\$21,000.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$21,186.00

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

Rent Owing To Hearing Date	\$15,610.98
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$3,500.00
Less the amount of the interest on the last month's rent deposit	- \$70.68
Total amount owing to the Landlord	\$12,226.30
Plus daily compensation owing for each day of occupation starting February 19, 2026	\$115.07 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	