



**Order under Section 21.2 of the
Statutory Powers Procedure Act
and the Residential Tenancies Act, 2006**

Citation: Fattahaljanan v Yasin, 2026 ONLTB 17967

Date: 2026-03-02

File Number: LTB-L-014032-23-RV

In the matter of: 281 GOLDRIDGE DRIVE
KANATA ONTARIO K2T1H4

Between: Akram Fattahaljanan Landlords
Mehrdad Fahimnia

And

Rehan Yasin Former Tenants
Arba Rehan

Review Order

Akram Fattahaljanan and Mehrdad Fahimnia (the 'Landlords') applied for an order requiring Rehan Yasin and Arba Rehan (the 'Former Tenants') to pay the rent and daily compensation that the Former Tenant owe.

The Landlords also applied for an order requiring the Former Tenants to pay the Landlords' reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

The Landlords also applied for an order requiring the Former Tenants to pay the Landlords' reasonable out-of-pocket costs that are the result of the Former Tenants' conduct or that of another occupant of the rental unit or someone the Former Tenants permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

The application was resolved by order LTB-L-014032-23 issued on February 5, 2024.

On February 21, 2024 the Landlords requested a review of the order.

On February 22, 2024 interim order LTB-L-014032-23-RV-IN was issued, directing the request to review to a hearing.

The request to review was heard on April 16, 2024, and granted by interim review order LTB-L-014032-23-RV-IN2, issued January 24, 2024. The application was directed to be heard *de novo*.

This application was heard *de novo* by videoconference on January 16, 2026.

The Landlords, the Landlords' legal representative, Linda Flores ('LF'), the Tenants, and the Tenants' witness, Syed Shariq Ghani ('SG'), attended the hearing.

Determinations:

1. As explained below, the Landlords' application must be dismissed because it was filed more than one year after the Former Tenants ceased to be in possession of the unit.

Application filing date and when the Former Tenants vacated the rental unit

2. The application is stamped as received by the LTB on December 12, 2022, and the Landlords allege that the Former Tenants vacated the unit on December 6, 2021. If the application was filed on December 12, 2022 then it would have to be dismissed, because this is more than one year after the Former Tenants vacated the unit: see ss. 87(1.1)(b), 88.1(2)(b), and 89(1.1)(b), *Residential Tenancies Act, 2006*.
3. It is, however, determined in Interim Review Order LTB-L-014032-23-RV-IN2 that LF actually sent the application to the LTB by mail on December 1, 2022, and it is therefore deemed to have been delivered on December 6, 2022: see r. 4.8(b), *LTB Rules of Procedure*. If the Former Tenants ceased to be in possession of the unit on December 6, 2021, the application was filed within one year after the Former Tenants vacated the unit, as required by the *Residential Tenancies Act, 2006* (the 'Act').
4. The Former Tenants allege that they actually ceased to be in possession of the unit on November 30, 2021, which would put the filing of the application outside the limitation period.
5. The Former Tenant, Reshan Yasin ('RY'), presented an email that he sent to the Landlord, Mehrdad Fahimnia ('MF') on October 1, 2021 stating that the end date of the tenancy would be November 30, 2021. In the email, RY also asks if he should sign an N11 agreement to end the tenancy as well. MF replied to the email on October 2, 2021 thanking RY for the email, saying he hopes this works out for RY and his family, and there is "no need for a form" (DOC-7075788, p. 9).
6. The Landlord took the position that this was not an agreement to end the tenancy on November 30, 2021 because the Former Tenants had previously informed the Landlords that they would be vacating, but the timeline kept getting extended, and this communication does not amount to a certain agreement to end the tenancy (DOC-6042727, pp. 16-22). While RY had emailed MF several times suggesting the Former Tenants would be vacating earlier, I agree with RY's position that those other emails did not identify a specific termination date, or a clear agreement to end the tenancy on a specific date.

7. Considering the real substance of this transaction, and the with regard to the content and context of all of these communications, I find the parties agreed to terminate the tenancy on November 30, 2021 for the purposes of the Act: see ss. 37(3), *Residential Tenancies Act, 2006*. This is also supported by an email sent by MF to RY on December 4, 2021 where MF wrote “[t]oday is December 4th and your last day of tenancy has been Nov. 30th ...” (DOC-6042727, p. 34).
8. I understand that the changing timeline was frustrating for the Landlords, but previous frustration does not invalidate this agreement.
9. The fact that the parties agreed to terminate the tenancy on November 30, 2021 does not necessarily mean that this is when the Tenants actually vacated or ceased to be in possession of the unit.
10. To support his position, RY also presented a receipt from U-Haul, showing that he rented a moving truck on November 27, 2021 and returned it November 30, 2021 (DOC-7075788, p. 13). He also presented a copy of a text message exchange between RY and the Former Landlord, Akram Fattahaljanan (‘AF’), from December 1, 2021. It is apparent from the text that AF intended to send a text message to the Former Tenant, Arba Rehan (‘AR’), but sent it to RY. AF asks RY if he is at the unit, and RY provides AY’s phone number, and wrote that he was on the way to the house (DOC-7075788, p.14). RY said that this is when the keys were returned. I note that the keys, or the purpose of this exchange, is not identified in the messages.
11. RY also presented an invoice provided by the Landlord from Green Capital Renovation Inc. The invoice is for drier vent cleaning, work on support for a dishwasher, installation of cabinet supports, removing toilet bids, changing ceiling lights, replacing a garage door sensor and repairing holes in garage entry to the house. The invoice is dated December 7, 2021, and it lists the “Starting Date” as December 5, 2021, and the “Ending Date” as December 7, 2021 (DOC-7075788, p. 57). RY also presented an invoice provided by the Landlords from 8377294 Canada Inc. This invoice was to “paint the house 281 [G]old [R]idge Kanata Ontario”. It is dated December 6, 2021, includes a payment due date of December 6, 2021 and is marked as paid (DOC-7075788, p.57).
12. RY said it does not make sense that all of this work was completed if the Former Tenants were occupying the unit until December 6, 2021. RY said the keys were returned to the AF on December 1, 2021 after the Former Tenants vacated the unit on November 30, 2021.
13. On cross-examination, RY denied the Former Tenants had property in the unit past November 30, 2021, and denied that AF and her son assisted the Former Tenants with packing a truck with their property after December 1, 2021.
14. In the December 4, 2021 email from MF to RY, referred to above, MF requests confirmation that RY received a previous email from December 2, 2021, and provides a “final notice” for the Former Tenants to remove their belongings from the unit, and to give the keys to AF (DOC-6042727, p. 34).
15. MF and AF were not living in Canada at the time, but AF had flown into Ottawa to handle issues related to the end of the tenancy. RY said he had ignored the December 2, 2021

email because AF was physically present, and there was no need to reply. He said the previous email had also claimed compensation for damage, which RY ignored.

16. RY replied to the December 4, 2021 email on December 5, 2021, where he apologized for the delayed response, and wrote "... I have spent a few hours yesterday and most of the points raised have already been addressed. But I will go back tomorrow to conclude anything that require[s] any attention" (DOC-7166359).
17. RY said that the comments about "spending a few hours" and going back to the unit the next day related to minor maintenance issues that AF had asked for help with.
18. RY said he did not have keys, but was able to access the unit because AK let him in. He also said on cross-examination that he did not reply to the part of the email about removing property because the Former Tenants' property was already removed, and it was not necessary to respond to this.
19. On redirect, RY clarified that the Former Tenants moved out of the unit November 30, 2021, returned the keys to AF on December 1, 2021, and he only returned to the unit on the following days to address some minor maintenance issues, as requested by the Landlords.
20. AR said she did a walk through of the unit with AK on December 1, 2021, when the keys were returned. She said that, at that time, none of the Former Tenants' property was left in the house. She recalled that AK mentioned a few issues, such as hooks on the walls, and some damage and a stain on the stove. AR recalled telling AK that these issues were present at the start of the tenancy, and said that AK did not say anything about any personal property in the unit.
21. AR's evidence that there was no property left in the unit after November 30, 2021 remained consistent on cross-examination. She said that she did not take any photos of the vacant unit.
22. SG said he lived a few streets away from the unit at the relevant time, and was friends with RY. SG said he remembers attending the unit on December 1, 2021, at which time he did not see any of the Former Tenants' personal property in the unit, and saw AK's vehicle in the driveway in the days after December 1, 2021 when he would drive by the property. He said he believes it was AK's vehicle because he knew it was not the Former Tenants' vehicle.
23. SG said that when he attended the unit on December 1, 2021 he entered through the garage and went through the main floor.
24. SG said he attended for about one hour, around 11:00 or 11:30 a.m. He said he did not see the Former Tenants give AK the keys while he was there.
25. SG did not recall if he went upstairs at the time, and said he did not go into the basement.
26. MF gave evidence at the hearing, but I note that he was not physically present to observe anything related to whether the Former Tenants had vacated, or had left property in the unit.

27. MF said AK told him the garage was half full of property and there was still a playground in the yard. He said that after December 1, 2021, it took 3 or 4 more van loads to remove the Former Tenants' property, and that AK and their son helped the Former Tenants with moving the remaining items.
28. MF also said that the Former Tenants had installed a keypad, which the Former Tenants used to access the unit. He said they did not replace this with the original lock and return the key until December 5 or 6, 2021. He also said that AK arrived in Ottawa around 1:00 a.m. on December 1, 2021, and when she arrived at the house, she could not access it because there was a keypad, and she had to wait in the vehicle.
29. MF said that the Landlords did not take photos of any property left in the unit after November 30, 2021.
30. AF said that after arriving in Ottawa, she got to the rental unit around 8:00 or 9:00 a.m. She said there was a car in the driveway, and the lock had been changed to a keypad lock. She said she went back to the unit in the early to mid-afternoon, and was shocked to find that there was still personal property in the unit. She denied having been given a key, and said there was a keypad lock on the door.
31. AF said she and her son helped the Former Tenants pack up a truck on December 5 or 6, 2021 and the Former Tenants finally got all their property out on December 6, 2021. However, she then said that RY changed the lock back and gave her the key on December 5 or 6, 2021. AK said that this was occurring during the Covid-19 pandemic, and she was at the rental unit during the days, but slept at a friend's house. She said that the second day she was in Ottawa, AR brought food to the unit for her, but she could not eat it because of an allergy.
32. I find that it is more likely than not that the Former Tenants actually moved out of the unit and stopped living there as of November 30, 2021. It is apparent from all of the evidence that they were not living in the unit past this date. AK arrived in Ottawa on December 1, 2021, and said she spent her days in the unit after his (with the exception of the issue she said she experienced on the morning of December 1, 2021 with the keypad). The fact that the Former Tenants were not living in the unit is also supported by the U-Haul invoice and the December 4-5, 2021 email exchange between RY and MF, in which RY said he spent several hours the previous day, and would "go back" the next day to address some minor repairs. He would not need to "go back" to the unit if he was living there. It is also supported by the evidence that AR brought food she had made to the unit for AF during this time. If AR had been living in the unit, she would not have brought food she made to the unit.
33. This is not necessarily dispositive of the application. This type of application can be filed up to one year after the Former Tenants "ceased to be in possession" of the unit: ss. 87(1.1)(b), 88.1(2)(b), and 89(1.1)(b), *Residential Tenancies Act, 2006*. It is possible not to be living in a unit, but to still be "in possession" of it.
34. The Court of Appeal for Ontario stated the following relative to the meaning of "tenant in possession" of a unit for the purposes of the Act:

[18] Not every dispute over rent arrears can be resolved by the Tribunal in a speedy, fair and efficient manner. I think the requirement that the tenant be "in possession of the rental unit" at the time of the application reflects a determination that rent arrears disputes can be resolved efficiently and fairly through the Tribunal where the tenant at the time of the application continues to have some connection with the rental unit and, therefore, some relationship with the landlord. Situations where that connection has been severed and the relationship gone are best resolved through the more formal court processes.

[19] Some further assistance in defining "tenant in possession" is found by an examination of s. 86(2). That subsection provides that a landlord may be compensated for "the use and occupation" of a rental unit after notice of termination of the lease. A landlord can only be compensated, however, if the tenant is "in possession of the rental unit" when the landlord's application is made. **This suggests that a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.**

[20] **Possession is a difficult concept to define. Both in common and legal parlance, it connotes some form of control over the thing said to be possessed:** e.g. D. Dukelow, B. Nuse, *The Dictionary of Canadian Law* 2nd ed., (1995) Carswell at p. 916; *The Shorter Oxford English Dictionary*, Vol. II (1973) p. 1635. Clearly, possession in s. 86(1)(b) is not limited to immediate physical control. For example, a tenant who locks up a rental unit and leaves on an extended vacation, continues to exercise sufficient control over that rental unit so as to qualify as a "tenant in possession" for the purposes of s. 86(1)(b). In my view, **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.**

[21] **There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of that rental unit.** [emphasis added]

1162994 Ontario Inv. V. Bakker, 2004 CanLII 59995 (ON CA), paras 18-21

35. As noted above, the Former Tenants were not living in the unit past November 30, 2021, and were therefore not occupying it. Even if there was a keypad lock on the door and the Former Tenants knew the code, I do not find that they had access to or control of the unit in the manner that a tenant in possession of a unit would. In my view, access to or control of a unit means having the ability to enter the unit and use it as one sees fit. AF was at the unit during the days according to her own evidence, and the Former Tenants were not free to access the unit or exercise control over it in the way a residential tenant in Ontario can

with respect their own rental units. This severance of the Former Tenants' control over and access to the unit is sufficient to render them not in possession of the unit as of December 1, 2021.

36. I therefore find that the Former Tenants ceased to be in possession of the rental unit, at the latest, on December 1, 2021 once AF attended the unit and began spending her days there.
37. Even if the Former Tenants left property in the unit after they moved out, this does not necessarily render them in possession of the unit. The Act specifically contemplates that a landlord is entitled to sell, retain, or dispose of property left in a rental unit if the unit has been vacated in accordance with a notice of termination or agreement to end the tenancy: ss. 41(1), *Residential Tenancies Act, 2006*.
38. This is the Landlord's application, so they bear the burden of proof on a balance of probabilities. This includes the burden of proving the application was filed within the limitation period having regard to the date the Former Tenants ceased to be in possession of the unit. To prove something on a balance of probabilities, one must present sufficient clear, convincing, and cogent evidence to establish that it is more likely than not that something happened or a fact is true: *FH v. McDougall*, 2008 SCC 53 (CanLII), paras 44-46.
39. Even if I were to find that the Former Tenants were in possession of the unit until the last of their personal property was removed, and I were to accept the Landlords' evidence on this point over the Former Tenants' evidence, they did not present sufficient clear, convincing, and cogent evidence that the last of the Former Tenants' property was removed on December 6, 2021.
40. MF and AF both said it was December 5 or 6, 2021 that RY changed the locks back and gave AF the key. AF said it was December 5 or 6 that she and her son helped the Former Tenants pack their property into a truck. AF did say the Tenants finally got all their property out of the unit on December 6, 2021, but given the uncertainty as to the specific date the lock was changed, they key returned, and that she and her son helped the Former Tenants pack a truck, if find AF's evidence unreliable to the extent that she conveyed certainty that the property was all removed by December 6, 2021 as opposed to December 5, 2021.
41. In other words, even if I accept the Landlords' evidence that the Former Tenants' property remained in the unit passed November 30, 2021, and even if I were to find that leaving property in a unit after moving out renders a person in possession, there was still not sufficient clear, convincing, and cogent evidence presented by the Landlords to establish that it was more likely than not that the last of the Former Tenant's property was removed on December 6, 2021 as opposed to December 5, 2021.
42. This one-day difference is important, because if the Former Tenants ceased to be in possession December 5, 2021 the application would have to be dismissed, but it could proceed if they ceased to be in possession on December 6, 2021.
43. I also note that, for similar reasons, if I were to accept the Landlords' evidence about when the key was returned, they did not present sufficient clear, convincing, and cogent evidence that the lock was changed back and they key returned on December 6, 2021 as

oppose to December 5, 2021. If I were to find that AF's presence at the unit during the days after the Former Tenants moved out did not represent sufficient severance of the Former Tenants' access to and control over the unit to render them out of possession, changing the lock back and returning the key certainly would. The Landlords did not prove that this happened after December 5, 2021.

44. For the foregoing reasons, the application must be dismissed because the Former Tenants ceased to be in possession of the rental unit more than one year before the application was filed: ss. 87(1.1)(b), 88.1(2)(b), and 89(1.1)(b), *Residential Tenancies Act, 2006*.
45. Even if the Former Tenants left property in the unit after December 1, 2021, they were still not in possession of the unit for the purposes of the Act. Even if I were to find that the Former Tenants remained in possession of the unit until all of their property was removed, the Landlords did not discharge their burden of proving it is more likely than not that the last of the Former Tenants' property was removed after December 5, 2021.
46. The Landlords' application is dismissed.

It is ordered that:

1. The Landlords' application is dismissed.

March 2, 2026
Date Issued

Mark Melchers
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.