



Order under Section 69 Residential Tenancies Act, 2006

Citation: Rathaur v Lovell, 2026 ONLTB 23645

Date: 2026-03-20

File Number: LTB-L-095239-25

In the matter of: 669 DOON SOUTH DR
KITCHENER ON N2P0H5

Between: Mamta Rathaur Landlords
Vivek Rathaur

And

Raechele Lovell Tenants
Daniel Goulet

Mamta Rathaur and Vivek Rathaur (the 'Landlords') applied for an order to terminate the tenancy and evict Raechele Lovell and Daniel Goulet (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (**L1 Application**).

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because (**L2 Application**):

- the Tenants have been persistently late in paying the Tenants rent.

This application was heard by videoconference on February 9, 2026.

The Landlord, M. Rathaur, the Landlord's legal representative, I. Karyakina, the Tenant, R. Lovell, and the Tenants' legal representative, C. Nguyen, attended the hearing.

Preliminary Issues:

Did the Landlord provide a rent-free period

1. There is no dispute that the Tenants did not pay the lawful rent owing for October 2024.
2. The Tenant testified that she moved into the rental unit in September 2022. The Tenant further testified that the Landlords' real estate agent advised her that there would be a rent-free period between October 1, 2024 and October 31, 2024. The Tenant submits that the rental listing also included this information. The Tenant did not summon the Landlord's

realtor to testify at the hearing nor did the Tenant submit a copy of the alleged listing to corroborate her allegation.

3. The Tenant relies on section G of the Standard Form Lease Agreement between the parties, which states:

The landlord can offer the tenant a discount for paying rent on or before the date it is due. This discount can be up to two per cent of the lawful rent.

The landlord can also offer rent-free periods or discounts in one of three ways:

- *Rent-free periods of up to three months within any 12-month period,*
- *A discount of up to one month's rent spread evenly over eight months, or*
- *A discount of up to two months' rent, with up to one month's rent spread evenly over the first seven months, and up to one month's rent discounted in one of the last five months.*

These types of discounts must be agreed to in writing.

4. The Tenant acknowledges that a rent-free period is not identified elsewhere in the lease and that no written agreement was entered into with the Landlord. However, the Tenant testified that the parties had a verbal agreement that October 2024 would be rent-free.
5. The Tenant testified that she followed up with the Landlord on October 3, 2024, but the Landlord refused to honour their agreement. A copy of the text message communication between the parties, found in the Landlords documents (ID #7291190), was submitted into evidence. In the communication, the Landlord advised that the rent for October 2024 remained owing. The Tenants respond by asking whether they could rely on section G of the lease agreement, stating that they believed they were entitled to one month of free rent after 12 months of rent being paid on time. The Landlord then requested that the Tenants contact them by telephone. The Tenant declined, stating that she had taken medication that made her drowsy.
6. The Landlord denies entering into either a written or verbal agreement with the Tenants for a rent-free period.
7. Based on the evidence before me, on a balance of probabilities, I am not satisfied that the parties entered into an agreement to provide a rent-free period between October 1, 2024 to October 31, 2024, as alleged by the Tenant.
8. The Tenant acknowledges that there was no written agreement and submits that the agreement was oral. However, this assertion is denied by the Landlord. The Tenant testified that the rental listing included a rent-free offer and that the Landlords' real estate agent confirmed this information. However, the Tenant did not summon the Landlord's real estate agent to testify and did not submit a copy of the rental listing to corroborate this allegation.
9. In the absence of corroborating evidence, I find that the Tenant's testimony alone is insufficient to establish that a rent-free agreement was reached. These findings were provided orally at the hearing.

Validity of the N4 notice

10. The Tenant raised a second preliminary issue regarding whether the N4 Notice of Termination was valid.
11. There is no dispute, that two N4 notices of termination were issued to the Tenants. The first N4 was issued October 23, 2025 with a termination date of November 6, 2025. The notice included the arrears for October 2024.
12. There is no dispute that the Tenant paid \$2,900.00 on October 31, 2025.
13. The Landlords issued a second N4 Notice of Termination dated November 11, 2025 with a termination date of November 26, 2025. The N4 notice included arrears for the period November 1, 2025 to November 30, 2025. The Tenant testified that she was confused by the issuance of the November N4 because she paid rent on October 31, 2025, which she intended to apply toward the November 2025 rent.
14. The Landlord testified that the October 31, 2025 payment was applied to the arrears of October 2024 rent.
15. The Tenant argues that the Landlord cannot unilaterally designate rent payments to previous arrears. The Tenant testified that she typically includes details with her payments indicating what the payment is for. However, in this case, her partner, the second named Tenant, issued the payment and did not specify where the payment should be applied. The Tenant testified that her partner has an intellectual disability and therefore did not provide direction as to how the payment should be applied.
16. The Tenants' representative relies on LTB order LTB-L-032834-25, which states, in part, at paragraph 6 that:

While a landlord may apply a payment to an earlier debt if the tenant has not specified which payment period it applies to, this must be clearly explained in the notice. The notice should identify the rental periods that make up the total arrears, allowing the tenant to gather proof of payment accordingly.
17. I am not bound by LTB orders and I was not persuaded by the representative's arguments. While I agree that a tenant may direct that a payment be applied to the rent for a particular month, I find that absent such direction, a landlord may apply a payment to whichever debt it chooses. This principal was confirmed by the Court of Appeal in *Malva Enterprises Inc. v. Rosgate Holdings Ltd.*, [1993 CanLII 8675 \(ON CA\)](#).
18. In this case, the Tenant testified that her partner did not designate where the October 31, 2025 payment was to be applied, stating that he has an intellectual disability. The Tenant's partner did not attend the hearing to provide testimony. In any event, there was no designation at the time the payment was made. Accordingly, the Landlord was entitled to apply the payment toward the outstanding arrears for October 2024.

19. Accordingly, I find that the N4 notice is valid.

Illegal rent increase

20. As a third preliminary issue, the Tenant argues that the Landlord issued an illegal rent increase of 14%.
21. There is no dispute that an N2 notice was issued on October 20, 2025 increasing the rent from \$2,900.00 to \$3,300.00 effective February 1, 2026.
22. There is no dispute that the rental property was built in 2018 and first occupied after November 15, 2018. The Landlords obtained possession of the unit on January 23, 2019 from the builder. The Tenants moved into the property in September 2022.
23. Section 6.1 of the *Residential Tenancies Act, 2006*, the ("Act"), provides that the rent increase guideline does not apply to certain units that were first occupied for residential purposes after November 15, 2018.
24. The Tenants' representative argues that the rental unit is not exempt from the rent increase guideline because the requirements of subsection 6.1(3) have not been met. In particular, the representative submits that the Landlord did not reside in another residential unit within the property.
25. There is no dispute that rental property is a single detached home which is occupied entirely by the Tenants.
26. The Tenants' representative relies on LTB orders LTB-L-071129-24, LTB-T-029238-24, LTB-L-078819-23 and LTB-L-086541-23. The representative submits that in those cases the Board found the rental units were not exempt pursuant to subsection 6.1(3).
27. The Landlords' representative argues that the exemption arises under subsection 6.1(2) of the Act because the rental unit was not created within an existing building. Rather the building was newly constructed, and no additions were made. Accordingly, subsection 6.1(3) does not apply.
28. Subsection 6.1(2) of the Act does not limit the exemption to a specific form of building. It applies to all new buildings, whether they are high-rise buildings, semi-detached homes, or as in this case, a detached single-family home.
29. Subsection 6.1(3) relates to rental units created within additions to pre-existing buildings. The cases relied upon by the Tenants' representative concern such additions. In this case, however, it was undisputed that the property was newly constructed in 2018 and was not occupied until after November 15, 2018. In this case, the Landlords first obtained possession from the builder on January 23, 2019.
30. Accordingly, I find that section 6.1(3) of the Act does not apply and that section 6.1(2) applies. The rental unit is therefore exempt from the rent increase guideline. The N2 notice of rent increase is valid, and the lawful rent is \$3,300.00 effective February 1, 2026.

Determinations:

L1 Application

31. 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.
32. As of the hearing date, the Tenants were still in possession of the rental unit.
33. The lawful rent is \$3,300.00. It is due on the 1st day of each month.
34. Based on the Monthly rent, the daily rent/compensation is \$108.49. This amount is calculated as follows: $\$3,300.00 \times 12$, divided by 365 days.
35. The Tenants have paid \$8,700.00 to the Landlords since the application was filed.
36. The rent arrears owing to February 28, 2026 are \$3,300.00.
37. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
38. The Landlords collected a rent deposit of \$2,900.00 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.
39. Interest on the rent deposit, in the amount of \$239.52 is owing to the Tenants for the period from October 1, 2022 to February 9, 2026.

L2 Application

40. On October 23, 2025, the Landlords gave the Tenants an N8 notice of termination with a termination date of December 31, 2025. The N8 notice alleges that the Tenants have persistently paid their rent late 8 times between January 2025 to October 2025.
41. The Tenant did not dispute the persistent late payments and testified that the rent was often paid 2 to 3 days late due to the household operating on a single income. The rent was not paid at all for November and December 2025. The Tenants have paid rent in full and on time for January and February 2026.
42. Based on the evidence before me, on a balance of probabilities, I find that the Tenants have persistently failed to pay the rent on the date it was due. Rent is due on the first day of each month. The rent was late 10 times between January 2025 to December 2025. The late payment was persistent and undeniable.

Relief from Eviction

43. The remaining issue before me is whether relief from eviction should be granted.
44. The Tenant testified that 2025 was an anomaly as her partner sustained a head injury that impacted their financial wellbeing. The Tenant testified that her current monthly income totals \$4,200.00, and that their monthly expenses, inclusive of rent, total \$6,025.00. The Tenant submits that they are working to increase their income. Her partner was recently hired for new employment, and she is pursuing a master's degree and has negotiated a higher-paying position. The Tenant requests an 18-month payment plan.
45. The Tenants' representative submits that the L2 application should be dismissed on the basis that the Tenants have paid their rent in full and on time since January 2026 and therefore persistent late payment of rent is no longer an issue. Additionally, the representative submits that the previous late payments were only 2-3 days late and therefore insignificant.
46. The Landlord is not opposed to a 12-month payment plan, provided that an order requiring the rent to be paid in full and on time is also issued.
47. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
48. I find it would be unreasonable to dismiss the L2 application. There is no dispute that the rent is due on the first day of each month, and even where the rent was paid only 2 to 3 days late, it was nonetheless late. I acknowledge that the Tenants have paid rent in full and on time since January 2026, which supports their stated intention to comply with the lease terms moving forward. Accordingly, a conditional order requiring the rent to be paid in full and on time shall be issued.
49. With respect to the request for an 18-month payment plan, although the Landlord requested a 12-month plan as an alternative, the Landlord did not submit evidence that an 18-month payment plan would cause any prejudice. It was also undisputed that the Tenants made a significant payment after the application was issued, demonstrating their good faith intentions to address the arrears. In the circumstances, I find that an 18-month payment plan is reasonable.
50. This order includes all of my reasons within it no further reasons shall be issued.

It is ordered that:

1. The Tenants shall pay to the Landlords \$3,486.00 for arrears of rent up to February 28, 2026. This amount includes the \$186.00 application filing fee.
2. The Tenants shall pay to the Landlords the amount set out in paragraph 1 in accordance with the following schedule:

- a) \$193.00 on the 25th day of each month commencing March 25, 2026 to July 25, 2027 (17 months).
 - b) \$205.00 on August 25, 2027.
- 3. The Tenants shall also pay the lawful rent for March 2026 on or before March 25, 2026.
 - 4. The Tenants shall also pay to the Landlords new rent on time and in full as it comes due and owing for the period April 1, 2026 to August 1, 2027.
 - 5. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlords pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlords may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after February 28, 2026.

March 20, 2026
Date Issued

Mayra Sawicki
Member, Landlord and Tenant Board

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