



Order under Section 69 Residential Tenancies Act, 2006

Citation: Fernando v Gordon, 2026 ONLTB 30208

Date: 2026-04-20

File Number: LTB-L-014993-25

In the matter of: 58 COURTNEY STREET
CENTRE WELLINGTON ON N1M2W3

Between: Oscar J Fernando Landlords
Priyani C Fernando

And

Millicent Gordon Tenant

Oscar J Fernando and Priyani C Fernando (the 'Landlords') applied for an order to terminate the tenancy and evict Millicent Gordon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was adjourned on May 21, 2025, and heard by videoconference on April 1, 2026.

As a result of the adjournment, interim order LTB-L-014993-25-IN, dated May 27, 2025, was issued with respect to ongoing rent to be paid and any evidence to be relied upon must be filed with the LTB by July 1, 2025.

The Landlords' Representative, Mr. Bukhari, and the Tenant attended the hearing.

Determinations:

1. The Landlords served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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 Tenant was still in possession of the rental unit.

Lawful Rent and Allegation of Illegal Rent Increases

3. The Tenancy agreement was signed on November 30, 2018, to begin December 1, 2018, permitting the Tenant to take possession as of that date.
4. It was undisputed that the Landlords issued an N2 Notice of Rent Increase on September 26, 2024, for an increase that would take effect on January 1, 2025, increasing the monthly rent from \$2,100.00 to \$2,800.00. The Tenant disputed that she received the notice. The Landlord provided the certificate of service, a copy of Canada Post express post receipt, and proof of delivery tracking document that the notice was delivered to the Tenant's mailbox on September 27, 2024. As a result, I am satisfied the N2 Notice was served to the Tenant on September 27, 2024, pursuant to subsection 191(3) of the Act, and that it was given 90 days prior to the rent increase effective date of January 1, 2025.
5. The Tenant asserts that the Landlords' rent increase was unlawful and that the application must be dismissed for that reason. They assert the rent increase in this case must be pursuant to Ontario's rent increase guideline which sets out the maximum a Landlord can increase the rent during a year without the approval of the Landlord and Tenant Board. They say the Landlords increased the rent more than the guideline permits.
6. The Landlords increased the rent by more than \$700.00 in excess of the guideline for rent increase. The Tenant is correct that the guideline applies to most rental units, but it does not apply to a rental unit if no part of the unit was occupied for residential purposes on or before November 15, 2018 and the tenancy agreement was entered into after that date. The Act carves out an exemption from the application of the guideline and the Landlords may increase the rent by any amount, if the rental unit falls within the exemption. However, the Landlords bear the onus of proving the exemption applies to the rental unit. The Act provides as follows:

Exemptions from rules relating to rent

6.1 (1) In this section,

"addition" means, with respect to a mobile home park or land lease community, an expansion beyond the boundaries of the mobile home park or land lease community; ("rajout")

"commencement date" means the day section 1 of Schedule 36 to the Restoring Trust, Transparency and Accountability Act, 2018 comes into force. ("date d'entrée en vigueur") 2018, c. 17, Sched. 36, s. 1.

Buildings, etc., not occupied on or before November 15, 2018

(2) Sections 120, 121, 122, 126, 127, 129, 131, 132, 133, 165 and 167 do not apply on and after the commencement date with respect to a rental unit if the requirements set out in one of the following paragraphs are met:

1. The rental unit is located in a building, mobile home park or land lease community and no part of the building, mobile home park or land lease community was occupied for residential purposes on or before November 15, 2018.

2. The rental unit is entirely located in an addition to a building, mobile home park or land lease community and no part of the addition was occupied for residential purposes on or before November 15, 2018. 2018, c. 17, Sched. 36, s. 1.

Rental units in detached houses, semi-detached houses or row houses

(3) Sections 120, 121, 122, 126, 127, 129, 131, 132 and 133 do not apply on and after the commencement date with respect to a rental unit if all of the following requirements are met:

1. The rental unit is located in a detached house, semi-detached house or row house which, on or at any time before November 15, 2018, contained not more than two residential units.

2. The rental unit is a residential unit that meets all of the following requirements:

i. The unit has its own bathroom and kitchen facilities.

ii. The unit has one or more exterior or interior entrances.

iii. At each entrance, the unit has a door which is equipped so that it can be secured from the inside of the unit.

iv. At least one door described in subparagraph iii is capable of being locked from the outside of the unit.

3. The rental unit became a residential unit described in paragraph 2 after November 15, 2018.

4. One or both of the following circumstances apply:

i. At the time the rental unit was first occupied as a residential unit described in paragraph 2, the owner or one of the owners, as applicable, lived in another residential unit in the detached house, semi-detached house or row house.

ii. The rental unit is located in a part of the detached house, semi-detached house or row house which was unfinished space immediately before the rental unit became a residential unit described in paragraph 2. 2018, c. 17, Sched. 36, s. 1.

Non-application of exemption under subs. (2) or (3)

(4) Subject to subsection (5), the exemption under subsection (2) or (3) does not apply with respect to a rental unit that is subject to a tenancy in respect of which a tenancy agreement was entered into on or before November 15, 2018. 2018, c. 17, Sched. 36, s. 1.

Application of subs. (4)

(5) Subsection (4) applies only with respect to the tenancy described in that subsection and does not apply with respect to any subsequent tenancy. 2018, c. 17, Sched. 36, s. 1.

Burden of proof

(6) For greater certainty, in an application to the Board in which the application of subsection (2) or (3) is at issue, the onus is on the landlord to prove that the subsection applies. 2018, c. 17, Sched. 36, s. 1.

7. The Landlords' representative testified that the property was a new detached house which closed on September 14, 2018, and neither the Landlords nor any other person or tenant occupied the property before the tenancy began with the Tenants on December 1, 2018. A copy of the land transfer document for the property was submitted as evidence to support the Landlords' evidence.
8. Based on the evidence before me, and on a balance of probabilities, I find that the rental unit was not occupied prior to the commencement of the tenancy on December 1, 2018. I find it more likely than not that the Landlords purchased the rental unit as an investment property, as was stated. As such, I am satisfied that rental unit falls under the exemption rules with respect to rent increases, pursuant to section 6 of the Act, therefore the rent increase was not in breach of the guideline nor contrary to the Act.

Rent increases

9. The Tenant also alleges that there were two rent increases within a twelve month period, contrary to the Act. The Landlord denies the allegation. The Tenant did not provide any documentary evidence to substantiate her claim. At the original hearing date of May 21, 2025, the Tenant was ordered to submit all documents and evidence she intended to rely upon prior to the adjourned hearing. This was confirmed in my interim order. However, the Tenant did not comply with the disclosure requirements in my order and no evidence was put before me to show two rent increases within the twelve month period. As a result, I find that the Tenant failed to meet the burden of proof to establish that there was a "double" increase of rent.
10. Based on the submissions and evidence before me, and on a balance of probabilities, I am satisfied that the lawful monthly rent is \$3,250.00, effective January 1, 2026.
11. Based on the Monthly rent, the daily rent/compensation is \$106.85. This amount is calculated as follows: $\$3,250.00 \times 12$, divided by 365 days.
12. It was undisputed that the Tenant has paid \$24,658.00 to the Landlords since the application was filed.
13. The rent arrears owing to April 30, 2026 are \$17,742.00.
14. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlords collected a rent deposit of \$1,750.00 from the Tenant 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.
16. Interest on the rent deposit, in the amount of \$234.53 is owing to the Tenant for the period from December 1, 2018 to April 1, 2026.

Relief from Eviction

17. The Tenant testified that she is not living in the unit currently but has not returned the keys to the Landlords. The Tenant said there was a fire in the master bedroom of the rental unit on March 18, 2026, due to an accident with respect to a candle. She said she has moved most of her belongings into the garage, and requested a delay of eviction to April 30, 2026, to remove her remaining items.
18. The Landlords sought a standard order to terminate the tenancy.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Due to the issuance date of this order the Tenant has essentially been given the relief that was sought.

Tenant's Issues under Section 82

20. Pursuant to s. 82 of the Act, the Tenant raised both repair and maintenance issues in the rental unit and tenant rights issues. These issues may lead to an abatement of rent which would be set off against any arrears of rent owing to the Landlord, if proven.

Issues Raised Beyond Limitation Period

21. The Tenant raised the several issues about the tenancy with respect to maintenance and substantial interference with the reasonable enjoyment of the unit that began from the beginning of the tenancy, December 1, 2018 to March 30, 2023, including the following: inadequate garage parking space; front and backyard maintenance; broken washing machine and repair costs; and unlawful rent increase during Covid-19.
22. As explained at the hearing, pursuant to subsection 29 (2) of the Act, no application may be made by a Tenant for maintenance issues or tenant rights more than one year after the day the alleged conduct giving rise to the application occurred. This means that I am bound by the one-year limitation period. The Tenant first raised these issues in their section 82 issues in response to this Landlords' application on May 9, 2025. Therefore, the limitation period for issues that I can consider and grant a remedy for the Tenants is May 9, 2024.
23. Having reviewed the issues raised by the Tenant under s. 82 of the Act, I find that all of the issues occurred prior to May 9, 2024, and that they were either resolved prior to that date or are not ongoing at the date of the hearing. As a result, these maintenance and tenant rights issues are barred by the statutory limitation period and cannot be considered. The s. 82 issues are denied.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords or to the LTB in trust:

- \$17,928.00 if the payment is made on or before April 30, 2026. See Schedule 1 for the calculation of the amount owing.

OR

- \$21,178.00 if the payment is made on or before May 1, 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 May 1, 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 May 1, 2026.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlords \$12,800.32. 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 Landlords owe 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 Landlords compensation of \$106.85 per day for the use of the unit starting April 2, 2026 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before May 1, 2026, the Tenant will start to owe interest. This will be simple interest calculated from May 2, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 1, 2026, then starting May 2, 2026, the Landlords 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 May 2, 2026.

April 20, 2026
Date Issued

Colette Myers
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 November 2, 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 April 30, 2026

Rent Owing To April 30, 2026	\$42,400.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$24,658.00
Total the Tenant must pay to continue the tenancy	\$17,928.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 1, 2026

Rent Owing To May 31, 2026	\$45,650.00
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$24,658.00
Total the Tenant must pay to continue the tenancy	\$21,178.00

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

Rent Owing To Hearing Date	\$39,256.85
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$24,658.00
Less the amount of the last month's rent deposit	- \$1,750.00
Less the amount of the interest on the last month's rent deposit	- \$234.53
Total amount owing to the Landlord	\$12,800.32
Plus daily compensation owing for each day of occupation starting April 2, 2026	\$106.85 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	