



Order under Section 69 Residential Tenancies Act, 2006

Citation: 130 MACPHERSON INC v BENSON, 2026 ONLTB 31272

Date: 2026-04-27

File Number: LTB-L-068012-25

In the matter of: 19, 130 MACPHERSON AVE
TORONTO ON M5R1W8

Between: 130 MACPHERSON INC Landlord

And

AUDRA MAY BENSON Tenant

130 MACPHERSON INC (the 'Landlord') applied for an order to terminate the tenancy and evict AUDRA MAY BENSON (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 14, 2026.

The Landlord's legal representative, M. Ciobotaru, and the Tenant attended the hearing.

Preliminary Issues:

Tenant's adjournment request / Tenant's section 82 issues

1. By way of background, interim order dated September 29, 2025, required the Tenant to file and serve on or before October 15, 2025, a written description of the issues the Tenant intends to raise under section 82 of the *Residential Tenancies Act, 2006*, the ("Act"), in compliance with Rule 19.4 of the Board's Rules of Procedure. The order also required the Tenant to pay ongoing rent until the matter was resolved by the LTB.
2. At the onset of the hearing, the Tenant requested an adjournment on the basis that a T2/T6 application is scheduled for a hearing on May 20, 2026. The Tenant submits that the issues raised in that application are relevant to this proceeding, as they may result in a rent abatement. The Tenant further submits that the section 82 issues she seeks to raise are identical to those issues raised in her T2/T6 application.
3. The Landlord's representative opposed the request and submits that he is unaware of the scheduled T2/T6 hearing. Further, the Tenant failed to comply with interim order dated September 29, 2025, as the section 82 issues were not disclosed by the ordered deadline.

Additionally, while the Tenant has made some payments of rent, the full rent has not been consistently paid.

4. The Tenant submits that she has not paid ongoing rent because the Landlord's property manager prevented her from doing so. There is no dispute that the Tenant had the option of paying rent by cheque through the Landlord's drop box but chose not to do so on the basis that she considers it an unsafe method of payment.
5. The Tenant further submits that her section 82 issues were disclosed through the filing of her T2/T6 application. The Tenant states that the Board's portal advised that the application would be served on the Landlord and that she believed this satisfied her disclosure obligations. The Tenant submits that she is self represented and unfamiliar with the Board's process. The Landlord's representative denies having been served with the T2/T6 application.
6. There is no dispute that the Tenant served documentation relating to her section 82 issues on the Landlord's representative on or about April 7, 2026. The Landlord's representative submits that the disclosure contains numerous allegations and was only served seven days prior to the hearing, resulting in an inability to adequately respond.
7. The Tenant's request for an adjournment is denied. Section 82 of the Act permits a tenant to raise issues in response to a landlord's application. However, the existence of a separate T2/T6 application does not justify an adjournment.
8. Notwithstanding the above, the interim order required the Tenant to serve her section 82 issues by October 15, 2025. The Tenant did not comply with that order. While the Tenant submits that she believed filing the T2/T6 application satisfied this requirement, I am not satisfied that this explanation is reasonable. Parties are expected to comply with Board orders, including requirements respecting disclosure.
9. With respect to the Tenant's submission that she is not familiar with the Board's process, Parties are presumed to be familiar with the Board's basic processes, such as filing and serving of documentation. Any party that has such a lack of familiarity with the Board's process that their ability to participate in the proceedings is impaired should obtain legal advice or representation.
10. The Tenant's section 82 issues were served approximately 6 months after the ordered deadline. I find this delay is significant. I also find that the Tenant had the ability to pay rent through the Landlord's drop box. While the Tenant may have had concerns regarding that method of payment, the evidence does not support a finding that she was prevented from paying rent.
11. Rule 5.17 of the Board's Rules of Procedure provides that where a party fails to comply with an order to serve disclosure, the Board may proceed with the hearing, adjourn the hearing, or dismiss the application, motion or request.
12. In this case, permitting the Tenant to rely on her late disclosed section 82 issues would be prejudicial to the Landlord, given the timing and scope of the disclosure. I therefore do not permit the Tenant to raise section 82 issues in this proceeding. The Tenant is not prejudiced by this determination, as she retains the ability to pursue her T2/T6 application, which is scheduled for a hearing on May 20, 2026.

Determinations:

13. The Landlord 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.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$1,209.45. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$39.76. This amount is calculated as follows: $\$1,209.45 \times 12$, divided by 365 days.
17. The Tenant has paid \$4,639.97 to the Landlord since the application was filed.
18. The rent arrears owing to April 30, 2026 are \$9,674.47.
19. The Tenant disputes the arrears, asserting that she paid \$1,184.58 to the Landlord in December 2025, rather than \$1,061.36 as alleged by the Landlord. As a result, the Tenant submits that \$123.22 has not been accounted for. The Tenant did not submit documentary evidence to substantiate the alleged payment of \$1,184.58 for December 2025.
20. As stated in paragraph 4 of this order, the Tenant also takes the position that she withheld ongoing rent on the basis that the Landlord's payment method is unsafe. The Tenant submits that she has otherwise been a good Tenant and should not be evicted.
21. In the absence of documentary evidence to support the Tenant's assertion that an additional payment of \$123.22 was not been account for, I find that the Tenant has not met the onus of establishing that the Landlord's ledger is inaccurate. Further, based on the Tenant's direct testimony that she withheld rent, I prefer the Landlord's evidence. On a balance of probabilities, I find that the Tenant owes rent arrears in the amount of \$9,674.47 to April 30, 2026.
22. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Rent deposit

23. At the hearing, the Landlord's representative submitted that there was no last month's rent deposit on file. The Tenant was opposed and submitted that she paid a last month rent deposit of \$1,050.00 on December 18, 2020, but did not submit documentary evidence in support of this assertion.
24. I provided the parties the opportunity to make post hearing submissions with respect to the last months rent deposit. The Tenant was directed to file proof of payment towards the last months rent deposit on or before April 17, 2026, and the Landlord to submit a response, on or before April 22, 2026.
25. On April 14, 2026, the Tenant submitted copies of bank drafts issued to the Landlord as follows:

- a) \$1,100.00 dated December 7, 2020.
 - b) \$1,100.00 dated December 18, 2020.
 - c) \$200.00 receipt dated December 18, 2020 (prorated rent for the period December 21, 2020 to December 31, 2020).
26. As of April 23, 2026, the Landlord had not disputed the Tenant's evidence and did not file documentary evidence to challenge the Tenant's submissions.
27. Based on the uncontested evidence before me, on a balance of probabilities, I find that the Landlord collected a rent deposit of \$1,100.00 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.
28. Interest on the rent deposit, in the amount of \$103.17 is owing to the Tenant for the period from December 18, 2020 to April 14, 2026.

Section 83(3) considerations

29. Section 83(3) of the Act provides as follows:

Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
 - (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
 - (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;
 - (d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or
 - (e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding.
30. The Tenant alleges that the Landlord is in serious breach of their responsibilities under the Act, that the application is being brought because the Tenant complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards, and that the application was brought because the tenant has attempted to secure or enforce her legal rights.
31. The Tenant alleges that the Landlord interfered with her reasonable enjoyment by failing to accept and or provide alternative methods of rent payment. I am not satisfied that the Landlord's refusal to accept alternative payment methods constitutes a serious breach within the meaning of the Act.
32. The Tenant testified that the heat in the rental unit stopped working approximately two weeks prior to the hearing. However, the Tenant acknowledged that she did not and has not notified the Landlord of the issue. In the absence of notice, the Landlord cannot be

found to be in serious breach for a condition of which they were unaware. The Landlord is now on notice of the alleged lack of heat.

33. The Tenant testified that while the stovetop is functional, the oven is not working. Given that the Tenant continues to have use of a working stovetop, I am not satisfied that the issue with the oven rises to a level of a serious breach within the meaning of the Act. The Tenant remains at liberty to pursue this issue in her T2/T6 application. The Landlord is now on notice of this maintenance concern.
34. The Tenant further alleges that the Landlord attempted to require payment of rent by e-transfer, which she was not comfortable using, and therefore, refused to do so. The Tenant submitted e-mail correspondence between herself, the Landlord's property manager, and the Landlord's legal representative regarding methods of payment. On review of the evidence, I find that the Landlord provided multiple reasonable methods of payment, including direct deposit, e-transfer, mail and delivery to the Landlord's drop box. In these circumstances, I am not satisfied that the Landlord's conduct amounts to a serious breach or that the application was brought because the Tenant attempted to secure or enforce her legal rights.
35. The Tenant also testified that she is among several tenants who have contacted by-law authorities regarding concerns with the Landlord, including allegations of renovations, window repair issues, and mold. However, the Tenant led no evidence to establish that those other tenants are in arrears of rent wherein the Landlord failed to commence eviction proceedings against similarly situated tenants. In the absence of such evidence, I am not satisfied that this application was brought in response to the Tenant's complaints to a government authority.
36. Accordingly, I am not satisfied that the Tenant has established on a balance of probabilities, that any of the circumstances set out in section 83(3) apply.

Relief from eviction

37. There is no dispute that the Tenant submitted an N9 – Tenant's Notice to End the Tenancy, with a termination date of June 30, 2026. The Tenant requests time to vacate the rental unit until that date.
38. The Landlord opposes this request on the basis that the Tenant has chosen not to make rent payments through the Landlord's drop box despite having that option available. The Landlord submits that there is no reasonable basis to conclude that the Tenant will pay the rent owing for May or June 2026. The arrears have increased since the application was filed, and the Tenant has failed to respond to arrears letters requesting a repayment plan. In the circumstances, the Landlord requests a standard order.
39. The Tenant submits that the Landlord owes her money and asserts that she intends to make the May and June 2026 rent payments. However, no reliable evidence was provided to substantiate any set-off or to demonstrate an ability to bring the tenancy into good standing. The Tenant was not permitted to rely on section 82 issues at this hearing, and no determination has been made that any amount is owed to the Tenant. Accordingly, any claimed set-off cannot be considered in this application.

40. Based on the evidence before me, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
41. Although the Tenant submits that she intends to pay the ongoing rent, I am not persuaded that such payment will be made. The arrears have continued to increase since the application was filed, and the Tenant did not comply with the interim order on the basis that she does not consider the Landlord's method of payment to be safe. In these circumstances, I am not satisfied that the Tenant will make ongoing rent payments if permitted to remain in the unit until June 30, 2026. Accordingly, a standard order shall issue.

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:**
 - \$9,860.47 if the payment is made on or before April 30, 2026. See Schedule 1 for the calculation of the amount owing.

OR

 - \$11,069.92 if the payment is made on or before May 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 May 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 May 8, 2026.**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$8,004.49. 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 \$39.76 per day for the use of the unit starting April 15, 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 May 8, 2026, the Tenant will start to owe interest. This will be simple interest calculated from May 9, 2026 at 4.00% annually on the balance outstanding.

8. If the unit is not vacated on or before May 8, 2026, then starting May 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 May 9, 2026.

April 27, 2026

Date Issued

Mayra Sawicki

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 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 April 30, 2026

Rent Owing To April 30, 2026	\$14,314.44
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,639.97
Total the Tenant must pay to continue the tenancy	\$9,860.47

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

Rent Owing To May 31, 2026	\$15,523.89
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,639.97
Total the Tenant must pay to continue the tenancy	\$11,069.92

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

Rent Owing To Hearing Date	\$13,661.63
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$4,639.97
Less the amount of the last month's rent deposit	- \$1,100.00
Less the amount of the interest on the last month's rent deposit	- \$103.17
Total amount owing to the Landlord	\$8,004.49
Plus daily compensation owing for each day of occupation starting April 15, 2026	\$39.76 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	