



Order under Section 69 Residential Tenancies Act, 2006

Citation: 44 Virginia Inc. v Bates, 2026 ONLTB 33876

Date: 2026-04-24

File Number: LTB-L-090930-25

In the matter of: 105, 44 VIRGINIA ST
KINGSTON ON K7K5Y4

Between: 44 Virginia Inc. Landlord

And

Ashley Bates Tenant

44 Virginia Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ashley Bates (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on April 20, 2026.

The Landlord's legal representative, Lorrie McCullough, the Tenant's legal representative, John Done, and the Tenant attended the hearing.

Determinations:

Preliminary Issue: Signed, Sealed, but Not Delivered

1. Terry Hachey, the Tenant's step-father, is named on the lease for the rental unit but is not named as a tenant in the Landlord's application and was not named on the N4 Notice of Termination.
2. At the outset of the hearing, the Tenant's legal representative raised, by way of preliminary issue, the status of Mr. Hachey, submitting that he is a tenant by virtue of being named on the lease. Mr. Hachey did not attend the hearing. The Landlord's position is that Mr. Hachey is not a tenant; the Landlord has not named him in the application or on the N4.
3. The Tenant's legal representative submitted that the definition of "tenant" in the *Residential Tenancies Act, 2006* (the 'Act') is inclusive and not exhaustive, that the lease names Mr. Hachey as a tenant, and that regardless of any intention between the parties, the lease is a contract. The Tenant's legal representative

also submitted that the Landlord made a business decision to include Mr. Hachey on the lease.

4. In support of its position, the Landlord sought to enter into evidence a screenshot of what it described as the application to rent the unit. The Tenant's legal representative objected to the admission of that document on the basis that it was hearsay, that it had not been authenticated, that the individual who created it was not present to testify, and that the document was undated. He submitted that the document should not be admitted even under the principled exception to the hearsay rule because it was neither necessary nor reliable.
5. The Tenant's legal representative also requested an opportunity to file written submissions on the issue. I denied the request for written submissions. Accepting that request would effectively have required an adjournment of a matter that was otherwise ready to proceed, and I was satisfied that the issue could be fairly and efficiently determined on the oral submissions made at the hearing, consistent with the Board's obligation under section 183 of the Act to adopt the most expeditious method of determining the questions in a proceeding that affords the parties an adequate opportunity to be heard.
6. Ultimately, it was not necessary for me to make a formal ruling on the admissibility of the document. The preliminary issue was capable of being determined on the Tenant's direct oral testimony, which was uncontested and which addressed the substance of the issue directly. I therefore did not place any weight on the screenshot in reaching my determination, and my reasons for resolving the preliminary issue on the Tenant's evidence are set out below.
7. The Tenant's own evidence was that Mr. Hachey has never lived in the rental unit and that there was never any intention that he would live in the rental unit. She testified that Mr. Hachey signed the lease because she would not have qualified for the rental unit on her own and that he was, in her understanding, a co-signer. She testified that he has from time to time helped with rent but has not lived in the unit, even temporarily. At most, Mr. Hachey has visited the rental unit on the occasional weekend.
8. Following my questions to the Tenant on these points, the Tenant's legal representative asked follow-up questions, during which the Tenant confirmed that she did not have any conversation with the Landlord or the property manager about whether Mr. Hachey would appear on the lease as a tenant rather than as a guarantor. She testified that she was told she needed someone else to qualify but was not told in what capacity. Mr. Hachey did not attend to provide evidence. The Tenant's evidence on these points is uncontested.
9. I accept the Tenant's legal representative's submission that the definition of "tenant" in the Act is inclusive and does not, on its face, require occupancy. However, being named on a lease is not, without more, determinative of tenant status. The question is whether Mr. Hachey is a tenant in possession of the rental unit. The leading authority on that question is the Court of Appeal's

decision in *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA) ('*Bakker*').

10. In *Bakker*, the Court held that possession of a rental unit refers to some form of control over the unit as demonstrated by factors such as access to, use of, or occupation of the unit. Where the issue is difficult, the Board must decide, based on the evidence, whether there is a sufficient connection between the rental unit and the named tenant to support a finding that the tenant was in possession of the unit.
11. I am also mindful of section 202(1) of the Act, which requires the Board, in making findings on an application, to ascertain the real substance of all transactions and activities relating to a rental unit and the good faith of the participants, and which permits the Board, in doing so, to disregard the outward form of a transaction and to have regard to the pattern of activities relating to the rental unit. Section 202(1) is a direct answer to the Tenant's legal representative's submission that the lease is "a contract" and that the parties' intentions at the time of signing are therefore irrelevant. The Act expressly directs the Board to look beyond the outward form of the documents before it and to ascertain the real substance of the arrangement.
12. Applying these principles to the evidence before me, I find that Mr. Hachey is not a tenant of this rental unit. The outward form of the lease lists Mr. Hachey among those described as tenants and contains no occupancy condition. However, section 202(1) directs me to look past that outward form and to ascertain what Mr. Hachey's involvement with this tenancy, in substance, actually is.
13. On the Tenant's undisputed evidence, the pattern of Mr. Hachey's involvement is this: he has never resided at the rental unit, was never intended to reside at the rental unit, and has exercised no control over the unit. His sole connection to the rental unit, apart from being named on the lease, has been occasional financial assistance with the rent at times when the Tenant could not pay it on her own. The Tenant further testified, and I accept, that the reason Mr. Hachey was included at all was that she could not have qualified for the rental unit on her own. That is the function of a co-signer or guarantor, not of a tenant.
14. I find, on a balance of probabilities, that the real substance of Mr. Hachey's involvement with this tenancy is that of a co-signer or guarantor, and that his designation as a tenant on the face of the lease reflects the outward form of the transaction rather than its substance. This conclusion is also consistent with the Landlord's own treatment of Mr. Hachey: the Landlord has not named him as a tenant in the application or on the N4. In terms of how the Landlord has actually administered this tenancy, Mr. Hachey has been treated as something other than a tenant. That pattern of activity, which I am permitted to consider under section 202(1)(b), reinforces the conclusion that Mr. Hachey is not, in substance, a tenant of this rental unit.
15. The application proceeds against Ashley Bates as the sole Tenant.

Preliminary issue: Validity of N4 Notice

16. The Tenant's legal representative also submitted that the N4 Notice of Termination is invalid because the rent figure it reflects incorporates a rent increase for which the Landlord has not proven that a Notice of Rent Increase (N1) was served. When I asked for particulars, being which rent increase was alleged to have been improperly implemented, and on what basis, the Tenant's legal representative was unable to provide any. No evidence was led to show that any component of the rent reflected in the N4 was unlawful. The Tenant confirmed at the hearing that she received the most recent rent increase, which took effect April 1, 2026.
17. A bare and unparticularized assertion that the N4 contains an unlawful rent increase is not sufficient to impugn the notice. There is nothing before me to suggest that the rent reflected in the N4 is other than the lawful rent. I find that the N4 is valid.

L1 Application

18. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the notice or before the day the application was filed.
19. As of the hearing date, the Tenant was still in possession of the rental unit.
20. The lawful rent is \$1,622.11. It is due on the 1st day of each month.
21. The Tenant has paid \$6,788.75 to the Landlord since the application was filed.
22. The Tenant disputed a portion of the arrears. She testified that a community organization made a payment on her behalf of approximately \$3,500.00 in March 2026, but that she was not certain whether the cheque had been cashed, and that the organization is still looking into the matter. The Landlord has no record of receiving the payment. The Tenant did not dispute the balance of the arrears.
23. The Tenant bears the onus of establishing that a payment has been made and credited. On the evidence before me, I am unable to find that a \$3,500.00 payment from the community organization was received by the Landlord. The arrears figures, which reflect the payments the Landlord has in fact received, therefore stand.
24. The rent arrears owing to April 30, 2026 are \$13,430.36.
25. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
26. Accordingly, the total amount the Tenant owes the Landlord is \$13,616.36.

Relief from Eviction

27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 subsections 83(1)(a) and 204(1) of the Act.
28. The Tenant testified that she fell behind on rent after losing her job and exhausting her Employment Insurance benefits. She returned to employment on March 9, 2026, and her partner has also returned to work. She also testified that she has lupus, a chronic condition that she described as a disability. I accept this evidence.
29. The Tenant disclosed monthly income of approximately \$2,500.00 from her own employment. With her partner's income included, the total household income is approximately \$3,800.00 per month. Her disclosed monthly expenses, including the rent of \$1,622.11, total approximately \$2,805.00. On the Tenant's own income alone, her expenses exceed income by roughly \$300.00 per month. On the household's combined income, there is a surplus of approximately \$1,000.00 per month.
30. In closing submissions, the Tenant's legal representative submitted that it is not clear whether the Tenant's partner is a spouse within the meaning of the Family Law Act and, on that basis, that the partner's income should not be treated as available to support the tenancy. I do not need to make a finding on the partner's status under the Family Law Act to dispose of this application.
31. The relevant question under section 83 of the Act is the household's actual capacity to pay. That capacity is informed by the income the Tenant herself disclosed as part of her monthly budget; she presented her household income as including her partner's contribution and advanced her proposed repayment plan on that basis. Whether or not the partner meets the definition of spouse for other purposes, the partner's income is, on the Tenant's own evidence, presently contributing to the household and has been for a great deal of time and is properly taken into account in assessing capacity to pay.
32. The Tenant proposed a repayment plan of \$150.00 per month beginning May 20, 2026. Her legal representative submitted that this plan was appropriate given the Tenant's relatively low income and that the Landlord had not demonstrated any specific financial prejudice from an extended plan.
33. I accept that the Landlord has not established any specific financial prejudice that would flow from an extended repayment plan. However, absence of prejudice to the Landlord is not the same as reasonableness. A plan under section 83 must be realistic: it must reflect the Tenant's actual capacity to pay, and it must restore the tenancy to good standing within a reasonable period of time.

34. When I asked the Tenant why she could not contribute more than \$150.00 per month given the surplus reflected in the household's combined income, she answered that she was being cautious of any emergencies that may come up.
35. I accept that arrears of this magnitude may cause anxiety, but fear alone is not a sufficient basis to set repayment at a level well below what the Tenant's own disclosed income and expenses demonstrate the household is able to pay. A plan of \$150.00 per month against arrears of \$13,616.36 would take more than seven years to complete. In my view, that is not a reasonable period within which to restore this tenancy to good standing, particularly where the Tenant's disclosed household circumstances reflect a capacity to pay substantially more.
36. Taking into account the Tenant's disclosed household income and expenses, the recent return to employment of both the Tenant and her partner, the Tenant's medical circumstances, and the principles discussed above, I find that a monthly payment of \$500.00 towards the arrears strikes an appropriate balance between the household's capacity to pay and the need to restore the tenancy to good standing within a reasonable period. The Landlord retains its remedy under section 78 of the Act in the event of default.

It is ordered that:

1. The Tenant shall pay to the Landlord \$13,616.36 for arrears of rent up to April 30, 2026 and costs.
2. The Tenant shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

Date Payment Due	Amount of Payment
May 20, 2026	\$500.00
June 20, 2026	\$500.00
July 20, 2026	\$500.00
August 20, 2026	\$500.00
September 20, 2026	\$500.00
October 20, 2026	\$500.00
November 20, 2026	\$500.00
December 20, 2026	\$500.00
January 20, 2027	\$500.00
February 20, 2027	\$500.00

March 20, 2027	\$500.00
April 20, 2027	\$500.00
May 20, 2027	\$500.00
June 20, 2027	\$500.00
July 20, 2027	\$500.00
August 20, 2027	\$500.00
September 20, 2027	\$500.00
October 20, 2027	\$500.00
November 20, 2027	\$500.00
December 20, 2027	\$500.00
January 20, 2028	\$500.00
February 20, 2028	\$500.00
March 20, 2028	\$500.00
April 20, 2028	\$500.00
May 20, 2028	\$500.00
June 20, 2028	\$500.00
July 20, 2028	\$500.00
August 20, 2028	\$116.36

3. The Tenant shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2026 to August 1, 2028, or until the arrears are paid in full, whichever date is earliest.
4. If the Tenant fails 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 Tenant to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenant, apply to the LTB within 30 days of the Tenant's breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenant and requiring that the Tenant pay any new arrears, NSF fees and related charges that became owing after April 30, 2026.

April 24, 2026
Date Issued

Colin Elsby
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.