



**Order under Section 88.2  
Residential Tenancies Act, 2006**

**File Number:** LTB-L-044634-25

**In the matter of:** 1, 475 CHURCHILL AVE N  
OTTAWA ON K1Z5E1

**Between:** Gavin Kelly Landlord  
Shi Meng Sun

**And**

Tesa Trzebiatowski Former Tenant  
Alexander MacDonald

Gavin Kelly and Shi Meng Sun (the 'Landlord') applied for an order requiring Tesa Trzebiatowski and Alexander MacDonald (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on March 30, 2026.

The Landlord Gavin Kelly and the Tenant Alexander MacDonald attended the hearing.

**Determinations:**

1. As explained below, the Landlord did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The L10 was filed on May 30, 2025.
3. The Landlord testified Tenant moved in on June 15, 2022 and vacated May 25, 2024. The Tenant agreed that they vacated May 25, 2025. The L10 filed by the Landlord listed a move out date of May 31, 2025.
4. The Landlord testified that while the Tenant choose to move out on May 25, 2024, the Tenant had originally indicated to him that they would be vacating May 31, 2024, then subsequently texted him to inform him that they had vacated the rental unit on May 25, 2024. The Landlord testified that he replied to the Tenant that he still considered the rental period to run to May 31, 2024, and would still be providing notice of entry to the Tenant if he needed to enter the rental unit prior to June 1, 2024.

5. The Landlord also testified that he had sought assistance from the Landlord self Help Centre and tried to comply with the limitation period and would have filed the L10 earlier had he known that the limitation period ran from May 25, 2024.
6. Section 88.2(2) states:
  - (2) An application under subsection (1) may be made,
    - (a) while the tenant is in possession of the rental unit; or
    - (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit. 2020, c. 16, Sched. 4, s. 20.
7. The limitation period within the Act hinges on the date that the Tenant ceased to be in possession of the rental unit. While the parties may have initially agreed to terminate the tenancy effective May 31, 2024, I am not satisfied that the day the tenancy terminated is necessarily the same date that the Tenant ceased to be in possession.
8. In *Bakker (1162994 Ontario Inc. v Bakker 2004 CanLII 59995 (ON CA)*, the Ontario Court of Appeal addressed the concept of possession and determined that 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”
9. In this case, I find that the Tenant ceased to have access to, use of, and occupation of the rental unit as of May 25, 2022. This supports that the Tenant’s assertion that they were no longer in possession of the rental unit by this date.
10. The Tenant’s message from May 25, 2025 is clear and indicates that the Tenant have removed all of their belongings and left the keys in the rental unit for the Landlord. There is no indication that the Tenant intends to return to the rental unit. While the Landlord responded the same day indicating, they would still provide 24 hours notice before entry before entering the unit, I am not satisfied that this is sufficient to find the Tenants were still in possession and note that without keys the Tenant’s would not have any ability to access the rental unit after May 25, 2024.
11. Therefore, as the Tenant had clearly indicated to the Landlord on May 25, 2022, that they had vacated the rental unit and would not be returning, the Tenant cannot be said to still be in possession of the rental unit.
12. The Divisional Court also addressed possession in *Highfields Farm Corp. v. Francis, 2024 ONSC 6732*. While this is an appeal related to possession in the context of Section 87(1) of the Act, I am satisfied that it is still relevant in this case.
13. In *Highfields Farm Corp* the court states at paragraph 32:

*If the Appellant’s contention were correct, all tenants would remain “in possession” because, until their tenancy is legally terminated, they have a legal right to re-enter the property even if they previously vacated it. That, however, is not the test established in Bakker.*
14. In this while the parties had initial agreed to terminate the tenancy on May 31, 2024, I am satisfied that the Tenant ceased to be in possession of the rental unit effective May 25,

2024. The Tenant's text from this date is quite concise and makes it abundantly clear that the Tenant has vacated the rental unit and shall not be returning, and does not have the ability to so, as the keys have been left behind. Accordingly, I am satisfied that the Tenant ceased to be in possession on May 25, 2024.

15. Therefore, I find that the application was not filed within one year after the Former Tenant ceased to be in possession of the rental unit. Therefore, the Application must be dismissed.

**It is ordered that:**

1. The Landlord's Application is dismissed.

**May 5, 2026**  
**Date Issued**

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Reid Jackson  
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.