



Order under Section 69 Residential Tenancies Act, 2006

Citation: Henley Group Ltd. v Bizier, 2026 ONLTB 35603

Date: 2026-05-01

File Number: LTB-L-089609-25

In the matter of: 5, 321 HUNTER ST E
HAMILTON ON L8N1N7

Between: Henley Group Ltd. Landlord

And

Michael Bizier Tenants
Leslie Lovejoy

Henley Group Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Bizier and Leslie Lovejoy (the 'Tenants') because the Tenant did not pay the rent that the Tenant owe.

This application was heard by videoconference on January 12, 2026.

The Landlord, the Landlord's Legal Representative, Adian Timmerman, the Tenant's Legal Representative, Ashely Wilson and the Tenants attended the hearing.

Determinations:

1. The Landlord 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$886.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$29.13. This amount is calculated as follows: \$886.00 x 12, divided by 365 days.
5. The Tenant has paid \$4,430.00 to the Landlord since the application was filed.
6. The rent arrears owing to January 31, 2026 are \$7,088.00.

7. The Landlord collected a rent deposit of \$822.00 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.
8. Interest on the rent deposit, in the amount of \$76.41 is owing to the Tenant for the period from March 7, 2022 to January 12, 2026.
9. The Landlord's Legal Representative submitted that the Landlord had issued two separate N13 notices and L2 applications on the Tenant, which provided three months compensation pursuant to the Act and an additional month of compensation as agreed upon between the parties.
10. The Tenants did not move out of the rental unit in accordance with the termination dates set out in each of the Landlord's two separate N13 notices. As the Landlord withdrew the first L2 application hearing of July 7, 2025 on or about May 15, 2025 an issued a new N13 notice and L2 application which was to be heard on September 9, 2025 (LTB-L-042501-25) which was ultimately withdrawn prior to the hearing again, as the Landlord had a change in plans regarding the renovations to be completed due to changes in by-laws of the City of Hamilton.
11. The Landlord now seeks the compensation provided to the Tenants including the two extra months as agreed upon be returned and considers the same rental arrears.
12. Section 54 of the Act requires a landlord who has served a tenant with an N13 notice pursuant to section 50 to pay compensation to the Tenants in an amount equal to three month's rent. Section 55.1 of the Act requires the compensation must be paid no later than on the termination date specified in the N13 notice of termination given by the landlord under section 50.
13. The Landlord's Legal Representative alleged the Landlords paid compensation on two separate occasions for the two N13 notices and accompanying applications (3 months of compensation each time) and further waived two month's rent (one month each time) and now seek the return of the same. The Tenants' Legal Representative did not dispute the same, other than these funds are not to be considered rental arrears, as the funds were compensation not ordered to be returned by the Board pursuant to the Act.
14. I agree with the Tenants position, that on a balance of probabilities they did receive the requisite compensation equal to three month's rent prior to the date of terminations on two separate N13 notices, including an extra waived month of rent each time, for a total of 8 months of rent, the exact amount and the months sought as rent arrears by the Landlord, after he withdrew both L2 applications associated with the two N13 notices.
15. I note the Landlord withdrew two separate L2 applications based on N13 notices were final, the Landlord did not seek compensation to be order returned from the Board nor attended the hearing dates. It was not appealed, and the Landlord did not file a request to review the withdrawal requests, nor was any compensation ordered to be paid back by the Tenants pursuant to subsection 73.1 of the Act.
16. Subsection 73.1(1) of the Act states:

73.1 (1) If the landlord compensated the tenant under section 48.1, 49.1, 52, 54 or 55, as the case may be, in connection with a notice of termination under section 48, 49 or 50 and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice, **the Board may order that the tenant pay back the compensation to the landlord**

[emphasis added]

17. I agree with the Tenants' Legal Representative submissions that the Landlord cannot rely on a previous withdrawn applications where compensation was paid by the Landlord but not ordered to be paid back by the Tenants and thereafter allege in a subsequent application that the unreturned compensation and waived rent as agreed is now rental arrears under the Act.

18. The Tenants' Legal Representative further submitted this is a Res Judicata issue.

Res Judicata - Issue estoppel

19. The doctrine of *res judicata* operates to ensure finality of decisions and prevent abuse of process. It stops a party from being able to seek another order on the same issue. In effect, it prevents a "second kick at the can". It has two aspects, issue estoppel and cause of action estoppel. The test for issue estoppel has three elements, which must all be present:

(1) the same question has been decided;

(2) the decision which is said to create the estoppel was final; and,

(3) that the parties to the prior decision were the same persons as the parties to the proceedings in which the estoppel is raised.

20. The Board has a residual discretion as to whether to apply the doctrine of res judicata even if all three of these criteria are satisfied. Further, res judicata or issue estoppel should not be applied in circumstances that would create an injustice.

21. I find that the question before me to determine in this application is the same as that considered by the Board in the prior withdrawn L2 applications based on the two N13 notices served on the Tenants, and compensation not being ordered to be repaid by the Tenants to the Landlord.

22. It now seems the Landlord is attempting to obtain a second kick at the can in regard to the return of compensation provided and the two months of rent waived and label the same rent arrears.

23. The previous L2 applications were withdrawn by the Landlord's counsel and those files were final. As abovementioned the Landlord did not seek a review the decision nor appeal.

24. The parties to the prior decision/applications are the same persons as the parties to these proceedings. The Landlord, the Tenants, and the rental unit are all the same.
25. I therefore find that issue estoppel *res judicata* applies to this application as all three of the requirements are met.
26. The Supreme Court of Canada addressed issue estoppel in *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 46, para. 33:
- The rules governing issue estoppel should not be mechanically applied. The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. ... the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied.
27. I do not find that the circumstances warrant an exercise of my residual discretion to not apply the doctrine of *res judicata*.
28. I am not persuaded by the Landlord's Legal Representative's submissions on why the doctrine of *res judicata* does not apply to this situation at hand.
29. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence presented at the hearing and all of the oral testimony when making my determinations.
30. This order contains all reasons for the determination and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's Application is dismissed.

May 1, 2026
Date Issued

Panagiotis P. Roupas
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.