



Order under Section 69 Residential Tenancies Act, 2006

Citation: MICHAEL v DA COSTA, 2026 ONLTB 35089

Date: 2026-05-05

File Number: LTB-L-014973-26

In the matter of: UNIT 42, 288 GLOVER RD
STONEY CREEK ON L8E5H6

Between: Parker John Michael Landlord

And

Ricardo Da Costa Tenants
Ana Maria Vidal Henriques

Parker John Michael (the 'Landlord') applied for an order to terminate the tenancy and evict Ricardo Da Costa and Ana Maria Vidal Henriques (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on April 28, 2026.

The Landlord's Representative, Michelle Mont, the Landlord Agent, Cara Parker, and the Tenant, Ana Maria Vidal Henriques, attended the hearing.

Determinations:

Preliminary Issue – The Proper Parties

1. The Tenants were formerly in some kind of a relationship. They entered into a tenancy with the Landlord as joint tenants. However, at some point the relationship changed and the Tenant, Ricardo Da Costa ("RDC"), vacated the rental unit in February 2022. The Tenant, Ana Maria Vidal Henriques ("AMVH") testified that she did not recall when she informed the Landlord confirming that RDC had moved out.
2. There was no dispute that AMVH was still in possession of the rental unit at the time of the hearing.
3. There was no dispute that RDC did not provide the Landlord with notice to terminate the tenancy. However, the Landlord's Representative provided that RDC was still a tenant in possession as he was still making rent payments as of December 2025 and therefore was still asserting some control over the rental unit, regardless of whether he was physically living in the unit or not.

4. The leading case on the meaning of whether a tenant is “in possession” of a rental unit is the Court of Appeal’s decision in *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA). In *Bakker*, the Court held that possession of a rental unit refers to some form of control over that unit as demonstrated by such factors such as access to, use of, or occupation of the unit.
5. While the Landlord may not have been given a formal notice that RDC was vacating, I am satisfied that the Landlord became aware at some point that RDC was no longer living in the rental unit. I am not satisfied that making rental payments alone is sufficient to maintain possession as contemplated by *Bakker*.
6. However, it does not necessarily follow from my finding that RDC is not in possession that he ought to be removed from this application or that he is not a tenant. This was a joint tenancy, and thus both Tenants became jointly and severally liable for the rent when they entered into the tenancy. While not binding on me, I agree with the general conclusions regarding joint tenancies from *Osgoode Properties v. Northmore*, 2018 CanLII 153456 (ON LTB), including that a joint tenant who unilaterally vacates a rental unit does not “divest” themselves of that tenancy. Moreover, although until recently the Board did not have the jurisdiction to order arrears against a tenant who has vacated, recent amendments to section 87 of the *Residential Tenancies Act*, 2006 make it clear that a tenant may still be considered a tenant even if they do not have possession of the unit. Section 87 allows the Board to order arrears against a tenant or former tenant not in possession where the tenant vacated on or after September 1, 2021, the application was filed within one year of the tenant vacating, and the tenant has been given notice of the application and hearing. All three criteria are satisfied in this case, and thus I am satisfied that I have the jurisdiction to make an order against both Tenants.

The Application

7. 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.
8. As of the hearing date, the Tenants were still in possession of the rental unit.
9. The lawful rent is \$2,750.00. It is due on the 1st day of each month.
10. Based on the Monthly rent, the daily rent/compensation is \$90.41. This amount is calculated as follows: \$2,750.00 x 12, divided by 365 days.
11. The Tenants have not made any payments since the application was filed.
12. It was undisputed that the rent arrears owing to April 30, 2026, are \$28,437.30.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

14. The Landlord collected a rent deposit of \$2,600.00 from the Tenants, 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.
15. Interest on the rent deposit, in the amount of \$266.74, is owing to the Tenants for the period from August 1, 2021, to April 28, 2026.

Relief from eviction

16. AMVH testified that she does not have the ability to pay the ongoing rent or the arrears and agreed that she needs to vacate the rental unit. However, she was seeking a delayed eviction date in light of having three children in the rental unit. AMVH testified that her children are 7, 6, and 4 years of age and AMVH was hoping to have until the end of June 2026 to find a new unit which would coincide with the end of the school year.
17. The Landlord's Agent testified that the arrears have become a huge financial burden on the Landlord, and the line of credit is almost maxed. The Landlord's Agent testified that the Landlord cannot continue to carry the costs of the rental unit without the rent to offset the costs. The Landlord's Agent testified that the Landlord is afraid of having to sell their own assets in order to cover the debt they are amassing due to the financial burden the rental unit is becoming.
18. While I am sympathetic to AMVH's position and understand her desire to keep the children in the rental unit until the end of school, I find that it is more unfair to the Landlord in the circumstances given the high amount of arrears and the undue financial burden the arrears has put the Landlord in. However, the Landlord is holding a last month's rent deposit which would offset any additional rent owing for May 2026 and therefore I find it fair to postpone the eviction to the end of May 2026. But to delay the eviction any further than that is I find is unduly prejudicial to the Landlord in the circumstances.
19. As such, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would not be unfair to postpone the eviction until May 31, 2026 pursuant to subsection 83(1)(b) of the Act..

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$31,373.30 if the payment is made on or before May 31, 2026. See Schedule 1 for the calculation of the amount owing.
3. The Tenants may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenants had paid the full amount owing as ordered, plus any additional rent that became due after May 31, 2026, but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenants may only make this motion once during the tenancy.

4. **If the Tenants do not pay the amount required to void this order, the Tenants must move out of the rental unit on or before May 31, 2026.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$25,538.04. 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 Tenants. See Schedule 1 for the calculation of the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$90.41 per day for the use of the unit starting April 29, 2026, until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2026, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2026, at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before May 31, 2026, then starting June 1, 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 June 1, 2026.

May 5, 2026
Date Issued

Nicole Pedron
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 December 1, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before May 31, 2026

Rent Owing to May 31, 2026	\$31,187.30
Application Filing Fee	\$186.00
Total the Tenants must pay to continue the tenancy	\$31,373.30

B. Amount the Tenants must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$28,218.78
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$266.74
Total amount owing to the Landlord	\$25,538.04
Plus, daily compensation owing for each day of occupation starting April 29, 2026	\$90.41 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	