



Amended Order
Order under Section 69
Residential Tenancies Act, 2006
And section 21.1 of the **Statutory Powers Procedure Act**

Citation: Barros v Machado, 2026 ONLTB 34045

Date: 2026-05-04

File Number: LTB-L-001730-26-AM

In the matter of: Basement, 4 Lydon Ave
York ON M6N4J4

Between: Joao Barros Landlord

And

Eduardo Araujo Machado Tenant

JOAO BARROS (the 'Landlord') applied for an order to terminate the tenancy and evict Eduardo Araujo Machado (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 24, 2026.

The Landlord, the Landlord's legal representative Tony Dutra, the Tenant, and the Tenant's legal representative Allen Welman attended the hearing. Maria Verci Lopez, the Landlord's wife, testified at the hearing.

This amended order is issued to correct clerical errors in the order issued on May 1, 2026.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On December 31, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2026. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's spouse's mother, Maraquin Francisca. Ms. Francisca was not present at the hearing.
4. The Landlord has not proven that they in good faith require possession of the rental unit for the purpose of Ms. Francisca's residential occupation for a period of at least one year.
5. A previous application by the Landlord – based on an N12 notice served on the Tenant on May 1, 2024 – was dismissed by the Board: LTB-L-048582-24. The Board dismissed that application on the basis that the Landlord has not proven that the Landlord's mother-in-law has a good faith intention to reside in the rental unit for a period of at least one year. As detailed in paragraph 10 of that order, the Member found that there was no evidence that Ms. Francisca – who is a citizen and resident of Mexico – had any authorization to remain in Canada for the required one-year period and no evidence was led to show that she had imminent plans to relocate to Canada.
6. Based on the evidence presented at the hearing, I am not satisfied that there has been a material change in circumstances and thus conclude that the current issue is barred by the doctrine of *res judicata*.
7. LTB-L-048582-24 is an order of the Board and is therefore final and binding pursuant to subsection 209(1) of the Residential Tenancies Act, 2006, S.O. 2006, c. 17 (the 'Act'), except where provided otherwise in the Act.
8. The parties to LTB-L-048582-24 are identical to the parties of the current application: it is an application filed by the Landlord naming the Tenant as the respondent. The issues to be decided are also the same: whether Ms. Francisca has a good-faith intention of residing in the rental unit for a period of at least one year.
9. At first blush, the doctrine of *res judicata* would appear to apply. The case of *Danyluk v. Ainsworth Technologies*, 2001 SCC 44 ('*Danyluk*') is the leading authority on the doctrine. The Court states that litigants must "put their best foot forward to establish the truth of their allegations when first called upon to do so" (para. 18) and sets out the test for whether litigation is barred by the doctrine of issue estoppel at para. 25 as the following:
 - (1) that the same question has been decided;
 - (2) that the judicial decision which is said to create the estoppel was final; and,
 - (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.
10. In my view, based on the evidence heard at the hearing, there is no material change of circumstances or of the issues before the Board since the Landlord's previous application. The only difference between the two cases before the Board is the fact that Ms. Francisca has obtained an Electronic Travel Authorization (an 'ETA') from Canadian immigration authorities. The ETA does not give Ms. Francisca a right to remain in Canada for any length of time and no other updates to her immigration status were provided at the hearing.

She was still in Mexico as of the date of the hearing. This leaves the parties in the same place as at the previous hearing: there is inherent uncertainty regarding Ms. Francisca's intention to reside in the rental unit for a period of one year as she has no immigration status in Canada that extends to the end of that time.

11. This is precisely the type of duplicative litigation that the doctrine of *res judicata* is intended to prevent. To quote the Supreme Court's words in *Danyluk*, "a person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided."
12. By filing a subsequent application, the Landlord is essentially seeking a second opportunity to put forward what is essentially the same case previously decided by the Board in the Tenant's favour.
13. Having found the doctrine of *res judicata* to be applicable in this case, I am satisfied on a balance of probabilities that the service of the N12 Notice and the filing of this application constitutes an abuse of process. What is before me is an attempt at re-litigation and proceeding to re-decide the matter would violate the principles identified by the Supreme Court of Canada in its consideration of abuse of process in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at para. 37: "judicial economy, consistency, finality and the integrity of the administration of justice."
14. Therefore, pursuant to the Board's powers to make orders as it considers proper to prevent abuse of its processes (*Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, s. 23), the Landlord's application is dismissed with prejudice.
15. At the hearing, I received submissions from the parties about whether party costs and/or Board costs should be ordered against the Landlord.
16. Rule 23.2 of the LTB Rules of Procedure (the 'LTB Rules') provides the Board the discretion to order a party to pay another party's representation/preparation fees not exceeding \$100.00 per hour. This discretion is open to the Board where a party engages in unreasonable conduct which causes undue delay or expense, as was the case here.
17. Rule 23.4 of the LTB Rules provides the Board with the power to order a party to pay the Board for its costs of a proceeding, not exceeding \$100.00 per hour.
18. The LTB's "Interpretation Guideline 3: Costs" states that situations in which a party's conduct is unreasonable may give rise to costs being ordered.
19. In my view, persisting to file another application with the Board subsequent to the decision in LTB-L-048582-24 is unreasonable conduct on the part of the Landlord. It is a duplicative drain on the resources of both the Board and the Tenant. In my view, this is an example of the exceptional circumstances in which an order for party costs and Board costs is warranted.
20. As such, I am satisfied that Party Costs in the amount of \$100.00 and Board Costs in the amount of \$100.00 are justified.

21. Pursuant to section 196 of the Act, failure to pay the ordered Board costs ordered may result in the Board refusing to accept any subsequent applications to be filed by the Landlord.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Landlord shall pay the Tenant party costs of \$100.00 on or before May 12, 2026.
3. If the Landlord does not pay the Tenant the full amount owing on or before May 12, 2026, the Landlord will start to owe interest. This will be simple interest calculated from May 13, 2026, at 4.00% annually on the balance outstanding.
4. The Landlord shall **also** pay ~~the Tenant party~~**Board** costs of \$100.00 on or before May 12, 2026.
5. If the Landlord does not pay the **TenantBoard** the full amount owing on or before May 12, 2026, the Landlord will start to owe interest. This will be simple interest calculated from May 13, 2026, at 4.00% annually on the balance outstanding.

May 1, 2026

Date Issued

Jeremy Henderson

Member, Landlord and Tenant Board

May 4, 2026

Date Amended

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.

The ordered Board costs can be paid by money order, bank draft or certified cheque, only, payable to the "Minister of Finance". This can be mailed/couriered to the LTB at 25 Grosvenor Street, Ground Floor, Toronto, ON M7A 2G6 or dropped off at most Service Ontario locations.