



Order under Section 69 Residential Tenancies Act, 2006

Citation: Topash v McCarthy, 2026 ONLTB 38133

Date: 2026-05-19

File Number: LTB-L-016021-26

In the matter of: Unit B, 121 Seventh St
Midland ON L4R3Y9

Between: Grigory Topash
Mina Bogodelny

Landlords

and

Garion McCarthy
Kylie Savage

Tenants

Grigory Topash and Mina Bogodelny (the 'Landlords') applied for an order to terminate the tenancy and evict Garion McCarthy and Kylie Savage (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on May 4, 2026.

Only the Landlords' Legal Representative, Gulnara Trofimova, the Landlords, and the Tenant, Kylie Savage ('KS') attended the hearing.

As of 1:48pm, the Tenant, Garion McCarthy, was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only evidence from the other parties present at the hearing.

Determinations:

Preliminary Issues

Removal of Amanda McCarthy as a party

1. It was undisputed that the Tenant, Amanda Jullian Mary McCarthy ('AM'), moved out of the rental unit on February 28, 2024. Although a joint tenant who unilaterally vacates a rental unit does not end their interest or responsibility in the joint tenancy and may still be responsible for any arrears of rent, the Board does not have jurisdiction in this case to make an order against AM. This is because under section 87 of the *Residential Tenancies Act, 2006* (the 'Act'), the Board only has jurisdiction to make an order against a former tenant not in possession where the application was filed within one year of the tenant

vacating the rental unit. In this case, the application was filed more than one year after AM vacated the rental unit and so the Board does not have jurisdiction to make an order against AM, and she shall be removed from the application.

Jurisdiction to make an order against Garion McCarthy

2. The Tenant, Kylie Savage, testified that her co-tenant, Garion McCarthy ('GM'), vacated the rental unit in January 2026. This was not disputed by the Landlord. There was no evidence before me that the parties agreed to remove GM from the lease.
3. This was a joint tenancy, and thus all three 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 Act 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 GM and KS.

Rent Arrears

4. The Landlords 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.
5. As of the hearing date, the Tenants were still in possession of the rental unit.
6. The lawful rent is \$2,500.00. It is due on the 1st day of each month.
7. Based on the Monthly rent, the daily rent/compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
8. The Tenants have not made any payments since the application was filed.
9. The rent arrears owing to June 1, 2026 are \$16,300.00.
10. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. The Landlords collected a rent deposit of \$2,500.00 from the Tenants and this deposit is still being held by the Landlords. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.

12. Interest on the rent deposit, in the amount of \$147.29 is owing to the Tenants for the period from December 1, 2023 to May 4, 2026.

Relief from Eviction

13. The Landlord is seeking a standard termination order. The Landlord, Grigory Topash ('GT'), testified that they have had to borrow money to keep up with the mortgage payments and have since missed a payment on the mortgage. He testified that the Landlords are also in arrears on their property taxes as they are unable to afford the payments.
14. KS did not ask to preserve the tenancy but rather asked to have until June 1, 2026 to move out of the rental unit. She testified that she cannot afford the rent but has not been successful in finding new living arrangements, although she has been looking for the past three months.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including that the Landlord attempted to negotiate a repayment plan with the Tenants, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
16. The tenancy is not viable as the Tenants are unable to afford to pay the monthly rent, let alone any amount towards the arrears. KS asked that eviction be postpone until June 1, 2026. Considering the date the order is issued, I find the request reasonable in the circumstances.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated unless the Tenants voids this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlords or to the LTB in trust:**
 - \$16,486.00 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 have 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 Landlords \$11,667.47. This amount includes rent arrears owing up to the date of the hearing. The rent deposit

and interest the Landlords owe 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 Landlords compensation of \$82.19 per day for the use of the unit starting May 5, 2026 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlords 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 Landlords 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 Landlords on or after June 1, 2026.

May 19, 2026
Date Issued

Candace Aboussafy
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 2, 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	\$16,300.00
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$16,486.00

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

Rent Owing to Hearing Date	\$14,128.76
Application Filing Fee	\$186.00
Less the amount of the last month's rent deposit	- \$2,500.00
Less the amount of the interest on the last month's rent deposit	- \$147.29
Total amount owing to the Landlords	\$11,667.47
Plus daily compensation owing for each day of occupation starting May 5, 2026	\$82.19 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	