



Order under Section 69 Residential Tenancies Act, 2006

Citation: Killam Apartment REIT v Boulton, 2026 ONLTB 38355

Date: 2026-05-14

File Number: LTB-L-016348-26

In the matter of: 208, 200 Eagle St N
Cambridge ON N3H5S9

Between:	Killem Apartment REIT	Landlord
	and	
	John Boulton	Tenant

Killam Apartment REIT (the 'Landlord') applied for an order to terminate the tenancy and evict John Boulton (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's Legal Representative, Jinal Patel, the Landlord's Agent, Kevin Arbuckle, and the Tenant attended the hearing.

Determinations:

Preliminary Issue – section 82 issues

1. At the hearing, the Tenant sought to raise several issues under section 82 of the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant sent an email to the Landlord's Legal Representative detailing issues related to moving his parking space as well as noise associated with construction being undertaken by the Landlord to the parking garage.
2. Rule 19.4 of the Board's Rules of Procedure requires that the Tenant provide the Landlord with and file with the Board, a written description of each issue they intend to raise. Although the Tenant did not properly file a written description of each issue with the Board, the Landlord's Legal Representative confirmed that the Landlord was prepared to respond to the section 82 issues raised in the Tenant's email to them. As there was no prejudice to the Landlord in proceeding with the section 82 issues, I permitted the Tenant to raise the two issues at the hearing under section 82 of the Act.

Rent Arrears

3. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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.

4. As of the hearing date, the Tenant was still in possession of the rental unit.
5. The lawful rent is \$2,864.87. It is due on the first day of each month.
6. Based on the Monthly rent, the daily rent/compensation is \$94.19. This amount is calculated as follows: $\$2,864.87 \times 12$, divided by 365 days.
7. The Tenant has paid \$7,250.00 to the Landlord since the application was filed.
8. The rent arrears owing to May 31, 2026 are \$2,689.22.
9. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
10. The Landlord collected a rent deposit of \$2,899.87 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.
11. Interest on the rent deposit, in the amount of \$34.87 is owing to the Tenant for the period from October 8, 2025 to May 4, 2026.

Section 82 Issues

12. At the hearing, the Tenant sought to raise two issues under section 82 of the Act, both relating to construction being undertaken by the Landlord with respect to the parking garage.
13. The Tenant testified that at the end of October 2025, the Landlord began construction on the parking garage, which resulted in his parking spot being moved from the covered parking garage with video surveillance, to an outdoor spot approximately a 20-minute walk from the building. He testified that the parking garage is directly below his apartment so the noise from all of the work has been substantial; he cannot have a phone conversation or here the television at time.
14. Kevin Arbuckle ('KA') is the Property Manager. He testified that the top level of the parking garage had to be torn off and rebuilt after the City of Cambridge issued an order requiring them to complete repairs to the structure. He testified that initially only the top level vehicles were removed while they assessed their options but ultimately when they got closer to the construction, all vehicles had to be removed from the structure so the repairs could be completed. He testified that they are expecting construction on the parking garage to finish this month.
15. Section 22 of the Act states the following:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex

in which it is located for all usual purposes by a tenant or members of his or her household.

16. Additionally, as explained in the Board's Interpretation Guideline 5, Section 8 of *O.Reg. 516/06* establishes the criteria to be applied by the Board in determining whether there is substantial interference arising from the landlord doing maintenance, repairs or capital improvements. These criteria must be applied in determining whether to order an abatement of rent, and the rules for calculating an abatement.
17. Regulation 516/06 subsection 8(3) states the following:
 - 8(3) In making a determination described in subsection (2),
 - (a) the Board shall consider the effect of the carrying out of the work on the use of the rental unit or residential complex by the tenant or former tenant, and by members of the household of the tenant or former tenant; and
 - (b) the Board shall not determine that an interference was substantial unless the carrying out of the work constituted an interference that was unreasonable in the circumstances with the use and enjoyment of the rental unit or residential complex by the tenant or former tenant, or by a member of the household of the tenant or former tenant.
18. It was undisputed that the Landlord ceased charging the Tenant for parking when the repairs commenced and that has continued while repairs are ongoing. The Tenant has not incurred any additional expense for parking during the repairs. The Tenant did not lead any evidence to suggest that the length of the repairs was unreasonable or that the Landlord could have done anything differently to minimize the noise and disturbance to the Tenant.
19. On the basis of the evidence before me, on a balance of probabilities, I find that the interference caused by the paving work was not unreasonable in the circumstances given the nature and extent of the work performed at the residential complex. Additionally, the Tenant was provided with alternative parking and did not offer any other reasonable solution to the issue of parking which could have minimized the inconvenience of having to park much further away.
20. Pursuant to the Regulation, the Board cannot order a rent abatement where the interference was not unreasonable in the circumstances, even if the Tenant was inconvenienced by the work and substantially impacted by the noise from the work. Therefore, the Tenant's claims under section 82 of the Act are dismissed.

Section 83

21. 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 Tenant, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

22. The Tenant is not seeking a payment plan. He testified that he arbitrarily withheld 50% of the rent due to the issues relating to construction on the parking garage. He submits that he will pay all arrears owing if ordered to do so. Considering that the arrears were due to the Tenant's decision to withhold rent contrary to the Act and that the Tenant wants to pay the arrears immediately, I find it reasonable in the circumstances to provide the Tenant with 11 days to pay the arrears in full or the Landlord can file with the sheriff to enforce termination of the tenancy.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$2,875.22 if the payment is made on or before May 25, 2026. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 25, 2026 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 25, 2026.**
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the arrears of rent, compensation and the cost of filing the application the Landlord is entitled to by \$2,547.63. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$94.19 per day for compensation for the use of the unit starting May 5, 2026 until the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
7. If the unit is not vacated on or before May 25, 2026, then starting May 26, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 May 26, 2026.

May 14, 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 November 26, 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 Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 25, 2026

Rent Owing to May 31, 2026	\$9,939.22
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,250.00
Total the Tenant must pay to continue the tenancy	\$2,875.22

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

Rent Owing to Hearing Date	\$7,451.11
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$7,250.00
Less the amount of the last month's rent deposit	- \$2,899.87
Less the amount of the interest on the last month's rent deposit	- \$34.87
Total amount owing to the Landlord	\$(2,547.63)
Plus daily compensation owing for each day of occupation starting May 5, 2026	\$94.19 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	