



**Order under Subsection 87(1)
Residential Tenancies Act, 2006**

File Number: LTB-L-001893-26

In the matter of: 7207 BENDIGO CIRCLE
MISSISSAUGA ON L5N 1Z4

Between: Mohamad Rabah Landlord

and

Afriym Eskharon
Kitty Barsoom Tenants

Mohamad Rabah (the 'Landlord') applied for an order requiring Afriym Eskharon and Kitty Barsoom (the 'Tenants') to pay the rent that the Tenants owe.

This application was heard by videoconference on March 30, 2026.

The Landlord and the Tenant, Afriym Eskharon, attended the hearing.

Determinations:

Preliminary Issues

1. Afriym Eskharon testified on behalf of both Tenants.
2. During examination, Mr. Eskharon indicated that he wanted to raise maintenance issues. Mr. Eskharon testified that he filed a separate T2/T6 application and a different member is seized of that matter. The Landlord objected to the Tenants raising maintenance issues during this proceeding and stated that he was not prepared to respond to the Tenants' issues at this hearing because he was not served in advance of the hearing with the Tenants' evidence and was not made aware of the Tenants' intention to raise section 82 issues at this hearing.
3. Rule 19.4 of the Board's Rules of Procedure provides that a Tenant who wishes to raise s.82 issues at a hearing about rent arrears must serve the Landlord and file with the Board a list of their issues as well as their supporting evidence at least seven days before the hearing.
4. Rule 19.5 provides that a Tenant who fails to comply with s.19.4 shall not be permitted to raise these issues at the hearing unless the Board is satisfied that they could not comply. The Tenant responded that he was not aware of the requirement.

5. In this case, the Tenants did not comply with the disclosure requirements and did not notify the Landlord of their intention to raise section 82 issues at this hearing. The Tenants also did not comply with the requirements set out in the Act and the Board's rules and they did not provide a reasonable explanation for failing to do so. The Tenants had advance notice of this hearing and ample opportunity to raise s. 82 issues but they did not. For this reason, I did not hear any evidence or submissions with respect to the Tenants' s.82 issues. I informed the Tenants that their maintenance issues can be heard once the Board schedules the application.
6. Mr. Eskharon also requested an adjournment at the beginning of the hearing block. He requested time to hire a legal representative. The Landlord objected to the adjournment and stated that the Tenants had sufficient time to prepare. The notice of hearing was sent to the parties on January 26, 2026. Based on the submissions, I denied the adjournment request because the Tenants had advance notice of this hearing and ample opportunity to retain a representative. A party's right to legal representation is not absolute and parties are expected to act diligently to obtain legal advice. In this case, the Tenants did not provide a reasonable explanation for failing to seek legal advice earlier. In addition, I held the matter down until the end of my hearing block to allow the Tenants additional time to prepare before hearing the merits of the application.
7. The Landlord filed an amended application, which he indicated he served on the Tenants on March 23, 2026. Mr. Eskharon confirmed receipt of the amended application and indicated that he was prepared to respond to the application. Accordingly, I am satisfied that the Landlord complied with the requirements in Rule 15.1 and the amendment is granted.

Evidence and Analysis

8. The Tenants were in possession of the rental unit on the date the application was filed.
9. The lawful rent was \$2,500.00 and it was due on the 1st day of each month.
10. It is undisputed that the tenancy terminated on February 28, 2026 when the Tenants vacated the rental unit.
11. The Landlord further testified that the rent for October 2024 and November 2024 had been paid. The Landlord claimed arrears for the following rental periods:
 - a. September 1, 2024 to September 30, 2024 (\$2,500.00);
 - b. September 1, 2025 to September 30, 2025 (\$2,500.00);
 - c. January 1, 2026 to January 31, 2026 (\$2,500.00); and
 - d. February 1, 2026 to February 28, 2026 (\$2,500.00).
12. Mr. Eskharon confirmed after checking his bank records that rent was not paid for September 2025, January 2026 and February 2026. I inquired whether the Tenants had proof that rent for September 2024 had been paid. Mr. Eskharon testified that he could not locate his bank records for September 2024.

13. In *Mauti v. Gibbs*, the Divisional Court explained that although the legal burden of proof is always on the Landlord to prove their case, once the Landlord provides evidence of non-payment, the Tenant bears an evidentiary burden to demonstrate that a disputed payment was made. If the tenant does not adduce evidence to counter or overcome the landlord's evidence, the landlord may or may not be found to have met their burden to prove the arrears on a balance of probabilities. The Court also noted that "as it is difficult to prove a negative (i.e. non-payment of rent), normally someone with appropriate knowledge on behalf of the landlord will simply testify that no money was received."¹
14. In this case, the Tenant did not provide any documentary evidence, such as bank records or receipts, to support the claim that additional payments were made that are not reflected in the Landlord's application. Therefore, I find that the Tenant has not met the evidentiary burden that payment was made for the month of September 2024. The Landlord's accounting was clear and consistent, and I am satisfied on a balance of probabilities that the rent for the above months is owing as the Landlord claims.
15. The parties also disputed whether the Landlord is currently holding a rent deposit for the Tenants. The Tenants' position is that a deposit is being held. The Landlord's position is that although a deposit was collected, it was applied to prior arrears.
16. The Landlord referred to the tenancy agreement dated August 17, 2018 which confirms the tenancy was initially for a one-year term beginning on September 1, 2018 and ending on August 31, 2019. The Landlord testified that at the start of the tenancy, the Tenant paid \$4,600.00, half of which was applied to the first month of the tenancy (September 1, 2018) and the other half was held as a last month's rent deposit. The Landlord testified that rent was not paid for August 2019, and he applied the rent deposit to that month.
17. The tenancy continued on a monthly basis after the initial one-year term expired. The tenancy ultimately terminated at the end of February 2026. Although section 106(10) of the *Residential Tenancies Act, 2006* (the "Act") requires the last month's rent deposit to be applied to the last month of the tenancy, in this case, I accept the Landlord's testimony that rent was not paid for August 2019 and because it was the end of the fixed tenancy term, it was applied to that period. The Tenants could not confirm if rent was paid for August 2019 and there was no documentary evidence before me confirming that rent was paid.
18. The Tenant also asserted that the last month's deposit was applied to August 2024 rent; however, there is no documentary evidence before me confirming such an agreement was made. Therefore, on a balance of probabilities, I am satisfied that the Landlord is not holding a last month's deposit because it was applied to August 2019.
19. In summary, I am satisfied that the Landlord is entitled to the rent owing for the period of September 1, 2024 to September 30, 2024, September 1, 2025 to September 30, 2025 and January 1, 2026 to February 28, 2026, which is a total of \$10,000.00.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

¹ *Mauti v. Gibbs*, 2019 ONSC 3355 (CanLII), at para 27

It is ordered that:

1. The Tenants shall pay to the Landlord \$10,186.00. This amount includes rent arrears owing up to February 28, 2026, and the cost of the application.
2. If the Tenants do not pay the Landlord the full amount owing on or before June 30, 2026, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2026, at 4.00% annually on the balance outstanding.

May 15, 2026

Date Issued

Adeela Alvez

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.