



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-018458-26

In the matter of: 101, 8 TRENT AVENUE
TORONTO ON M4C0A6

Between: Carmen McCracken Landlord
Mike McCracken

And

Chris Vacon Tenant
Sabrina McIntyre

Carmen McCracken and Mike McCracken (the 'Landlord') applied for an order to terminate the tenancy and evict Sabrina McIntyre and Chris Vacon (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlords also applied for an order to terminate the tenancy because the Tenants persistently paid their rent late (L2 application).

This application was heard by videoconference on May 11, 2026.

The Landlords and the Tenants attended the hearing.

Agreed Facts:

1. Ms. Vacon was in possession of the rental unit on the date the application was filed.
2. Mr. Vacon vacated the rental unit on April 14, 2026.
3. The amount of rent owing up to April 14, 2026, including the filing fee, last month's rent deposit, and interest on the deposit is \$3,588.37.

Determinations:

4. The parties agree on the amount of arrears owing as of April 14, 2026. The central issue at the hearing was whether both Ms. McIntyre and Mr. Vacon are liable for the rent, or whether liability rests solely with Mr. Vacon.
5. The parties also agree that both Tenants entered into a lease agreement with the Landlords on September 30, 2019.

6. The Tenants' evidence is that Ms. McIntyre vacated the rental unit in May 2023. In support of this position, the Tenants entered into evidence a new lease signed by Ms. McIntyre on May 1, 2023. Additionally, the Tenants produced an email dated December 13, 2023, in which Ms. McIntyre advised the Landlords that she had vacated the rental unit in May 2023.
7. The Landlords do not dispute that Ms. McIntyre vacated the rental unit. However, their position is that, as both Tenants remain parties to the lease, they continue to be jointly liable for the rent. The Landlords submitted into evidence an email in which they advised the Tenants that both would remain liable under the lease agreement despite Ms. McIntyre's departure from the unit.
8. In *1162994 Ontario Inc. v. Bakker, Crane, Klemos & Holmes*, [2004] O.J. No. 2565 (Ont. C.A.), the Court of Appeal considered the meaning of a tenant being "in possession" of a rental unit. In *Bakker*, the landlord sought arrears of rent and termination of the tenancy against four tenants who had signed the lease. At the time of the application, three of the tenants had vacated the unit, leaving only one remaining occupant. Ultimately, only the tenant still residing in the unit was ordered to pay the arrears.
9. The Court of Appeal held that, for the purposes of the *Act*, a tenant is "in possession" where there is a sufficient connection between the tenant and the rental unit. The Court stated that "possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the rental unit."
10. In determining whether Ms. McIntyre was "in possession," it is necessary to assess whether she retained any form of control over the rental unit. At the hearing, Ms. McIntyre confirmed that she did not return her keys to the Landlords but instead left them with Mr. Vacon. I do not find that in and of itself determinative of whether she had control over the rental unit.
11. Based on the evidence before me, I find that Ms. McIntyre unequivocally, completely, and permanently vacated the rental unit almost three years prior to the filing of the application. The Landlords acknowledged that they were aware of this fact. I am further satisfied that Ms. McIntyre exercised no control over the unit after vacating. The evidence establishes that the Tenants had ended their relationship and had little to no contact after May 2023. Ms. McIntyre testified she never returned to the rental unit, has no access to the rental unit, and does not occupy the rental unit. I found Ms. McIntyre's evidence on the issue to be convincing and straight-forward.
12. In light of these findings, I conclude that Ms. McIntyre was not in possession of the rental unit at the time the application was filed. Accordingly, the Board lacks jurisdiction under s. 87 of the *Act* to order her to pay arrears to the Landlords.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of April 14, 2026, the date the Tenant moved out of the rental unit.
2. Mr. Vacon shall pay to the Landlords \$3,588.37 as agreed.

3. If Mr. Vacon does not pay the Landlords the full amount owing on or before June 1, 2026, the Tenant will start to owe interest. This will be simple interest calculated from June 2, 2026 at 4.00% annually on the balance outstanding.
4. The L2 Application is dismissed.

May 21, 2026
Date Issued

Brett Lockwood
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.