



**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-024774-26

In the matter of: 209 HENDON AVE
TORONTO ON M2M 1A9

Between: Yongjiu Qiao Landlord
Fengping Niu

And

Eric Vincent Massara Tenant
Brenda Juarez Reyes

Yongjiu Qiao and Fengping Niu (the 'Landlord') applied for an order to terminate the tenancy and evict Eric Vincent Massara and Brenda Juarez Reyes (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

The Landlord also claimed charges related to NSF cheques.

This application was heard by videoconference on May 28, 2026.

Only the Landlord's agent, QingXuan Qiao attended the hearing.

As of 10:41am, the Tenant's were 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 the Landlord's evidence.

Determinations:

Board Jurisdiction

1. I find that the Board has jurisdiction to make an order for payment against the Tenants as they were in possession of the rental unit when this application was filed.
2. The uncontested evidence of the Landlord's agent was that both Tenants have vacated the rental unit. He stated that Eric Vincent Massara ('EVM') informed him on that Brenda Juarez Reyes returned to Mexico and no longer lived at the rental unit. The Landlord's agent did not provide a date and stated he was unable to contact, Brenda Juarez Reyes ('BJR') to confirm she was not longer occupying the rental unit.

3. The Landlord's agent stated when he served the N4 Notice on February 11, 2026, he was met by an unknown individual who informed him that she and 5 other individuals were renting rooms from Eric Vincent Massara ('EVM') and EVM removed his belongings, prior to the service of the N4 Notice on February 11, 2026.
4. Sometime in February 2026, EVM informed the Landlord's agent that he was working in New Brunswick. Further, on March 2, 2026, EVM directed the Landlord's agent not to deposit the rent cheques as he would send transfers to the Landlord on two dates including March 3, 2026. However, as of the hearing no transfers have been received.
5. EVM has not returned the keys to the Landlord or informed the Landlord that he does not intend to return to the rental unit.
6. Under s.87(1.1) of the Act, an L1 application can only be filed while a tenant is still in possession of the rental unit. Therefore, I must determine whether Eric Vincent Massara and Brenda Juarez Reyes were in possession of the rental unit when this application was filed on March 19, 2026.
7. The leading case on the meaning of "in possession" is the Court of Appeal's decision in *1162994 Ontario Inc. v. Bakker*, [2004 CanLII 59995 \(ON CA\)](#) ('Bakker'). It says (at paragraphs 18 to 22):

[18]...I think the requirement that the tenant be "in possession of the rental unit" at the time of the application reflects a determination that rent arrears disputes can be resolved efficiently and fairly through the Tribunal **where the tenant at the time of the application continues to have some connection with the rental unit and, therefore, some relationship with the landlord**. Situations where that connection has been severed and the relationship gone are best resolved through the more formal court processes.

[19] Some further assistance in defining "tenant in possession" is found by an examination of s. 86(2). That subsection provides that a landlord may be compensated for "the use and occupation" of a rental unit after notice of termination of the lease. A landlord can only be compensated, however, if the tenant is "in possession of the rental unit" when the landlord's application is made. This suggests that a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.

[20] Possession is a difficult concept to define. Both in common and legal parlance, it connotes some form of control over the thing said to be possessed: e.g. D. Dukelow, B. Nuse, *The Dictionary of Canadian Law* 2nd ed., (1995) Carswell at p. 916; *The Shorter Oxford English Dictionary*, Vol. II (1973) p. 1635. Clearly, possession in s. 86(1)(b) is not limited to immediate physical control. For example, a tenant who locks up a rental unit and leaves on an extended vacation, continues to exercise sufficient control over that rental unit so as to qualify as a "tenant in possession" for the purposes of s. 86(1)(b). In my view, 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 unit.

[21] There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, **the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of the rental unit.**

[22] In this case, **there was no connection between Bakker and the rental unit at the time the s. 86 application was commenced. Bakker exercised no control over that unit.** He had unequivocally, completely, and permanently vacated the unit more than two years before the application.

[Emphasis added.]

8. While the evidence before me is that EVM removed his belongings prior to the service of the N4 Notice and he was working in New Brunswick, I have no evidence that EVM will not return to the rental unit. In fact, EVM continue to demonstrate some degree of control over the rental unit as he has keys to the unit, permits occupancy to the rental unit and received rental payments from the occupants at the rental unit. There was no evidence before me to suggest either Tenant had established primary residence elsewhere or does not intend to return to the rental unit.
9. While the Tenants may not have been occupying the rental unit on the date the Landlord's agent served the N4 Notice, having considered all of the circumstances, I find that the Tenants were in possession of the rental unit on March 19, 2026, the date the application was filed, within the meaning of the Act according to the test outlined in *Bakker*.

L1 Application

10. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant's 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.
11. As of the hearing date, the Tenants were still in possession of the rental unit.
12. The lawful rent is \$3,400.00. It is due on the 1st day of each month.
13. Based on the Monthly rent, the daily rent/compensation is \$111.78. This amount is calculated as follows: \$3,400.00 x 12, divided by 365 days.
14. The Tenant's have not made any payments since the application was filed.
15. The rent arrears owing to May 31, 2026 are \$13,600.00.
16. The Landlord's agent abandoned the claim for the administration charges and bank fees.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

18. The Landlord collected a rent deposit of \$3,200.00 from the Tenants 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.
19. Interest on the rent deposit, in the amount of \$339.52 is owing to the Tenant's for the period from July 1, 2021 to May 28, 2026.
20. The Landlord's agent has attempted to negotiate a payment plan in February and March 2026, without success.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including whether the Landlord attempted to negotiate a repayment agreement with the Tenants and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant's is terminated unless the Tenants void this order.
2. **The Tenants may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$17,251.00 if the payment is made on or before June 20, 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 June 20, 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 Tenant does not pay the amount required to void this order the Tenants must move out of the rental unit on or before June 20, 2026.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$10,041.32. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application and unpaid NSF charges. The rent deposit and interest the Landlord owes 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 Landlord compensation of \$111.78 per day for the use of the unit starting May 29, 2026 until the date the Tenants moves out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before June 20, 2026, the Tenants will start to owe interest. This will be simple interest calculated from June 21, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before June 20, 2026, then starting June 21, 2026, the Landlord 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 Landlord on or after June 21, 2026.

June 9, 2026
Date Issued

Angela Smith
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 21, 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 June 20, 2026

Rent Owing To June 30, 2026	\$17,000.00
Application Filing Fee	\$186.00
NSF Charges	\$65.00
Total the Tenant must pay to continue the tenancy	\$17,251.00

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

Rent Owing To Hearing Date	\$13,329.84
Application Filing Fee	\$186.00
NSF Charges	\$65.00
Less the amount of the last month's rent deposit	- \$3,200.00
Less the amount of the interest on the last month's rent deposit	- \$339.52
Total amount owing to the Landlord	\$10,041.32
Plus daily compensation owing for each day of occupation starting May 29, 2026	\$111.78 (per day)
**Ongoing daily compensation continues to accumulate until the total amount owing (excluding costs) is \$50,000.00.	