



Order under Section 94 Residential Tenancies Act, 2006

Citation: Starlight Canadian Growth Fund III v Farley, 2026 ONLTB 45583

Date: 2026-06-17

File Number: LTB-L-027366-25-RV

In the matter of: 0001, 95 NOTCH HILL RD
KINGSTON ON K7M5Y6

Between: Starlight Canadian Growth Fund III Landlord

And

Brendalee Farley Tenant

REVIEW ORDER

Starlight Canadian Growth Fund III (the 'Landlord') applied for an order to terminate the tenancy and evict Brendalee Farley (the 'Tenant') because:

- the rental unit is the superintendent's premises and the Tenant's employment as superintendent has ended.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-027366-25 issued on September 17, 2025.

On October 17, 2025, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On October 20, 2025, interim order LTB-L-027366-25-RV-IN was issued, staying the order issued on September 17, 2025.

On December 3, 2025, the Tenant's review request was granted with interim order LTB-L-027366-25-RV-IN2 being issued and the presiding Member directed the application to a fresh hearing.

This application was heard by videoconference on April 1, 2026.

The Landlord's Legal Representative, Livinia Volney, the Tenant, and the Tenant's Legal Representative, John Done, attended the hearing. Donna Marie Lunyk attended as a witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated.
2. The L2 application was filed on April 3, 2025 and the Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenant vacated the rental unit on September 30, 2025.

Background

4. The Tenant's full-time employment as a superintendent for the Landlord commenced in September 2020 at 111 and 131 Notch Hill Road in Kingston, Ontario. Her employment included remuneration and the use of unit 103 in the building.
5. In October 2022, the Tenant asked the Landlord to reduce her employment to a part-time superintendent position due to health reasons. The Landlord accepted the request and the Tenant moved into Unit 0001, 95 Notch Hill Road in Kingston, Ontario. She moved into a two-bedroom unit and received remuneration and a superintendent allowance for the use of the unit.
6. The Tenant testified that at no time was she a tenant of the rental unit before commencing her employment with the Landlord.

Superintendent's Unit

7. The Landlord terminated the employment of the Tenant on October 26, 2024. The Tenant did not vacate the rental unit in accordance with the employment termination letter, dated September 17, 2024, which informed her the unit must be vacated no later than seven days after termination of her employment.
8. The Landlord's witness testified that she has been employed by the Landlord as the property manager since November 20, 2024. She stated that she possesses only minimal knowledge of the Landlord's application, other than her understanding that the Tenant was vacating the unit. She provided her interpretation of the employment contract, the superintendent's rent allowance, and the designated nature of the superintendent's unit.
9. The Landlord's witness testified that, in her understanding, the employment contract also functions as a tenancy agreement, that in each of the Landlord's buildings, one unit is designated for the superintendent; and that the Tenant received a 55% monthly rent allowance during her employment. She further explained that employment with the Landlord in the capacity of superintendent includes the provision of living accommodations, and that this arrangement is consistent across all of the Landlord's properties.
10. The Tenant testified that she understood the unit was provided to her as a part of her employment contract¹. She also understood the unit was a benefit stemming from her

¹ Tenant's evidence – DOC-7688168

employment as a part-time superintendent. She confirmed that a separate tenancy agreement was not entered into with the Landlord prior to or during her employment. The Tenant acknowledged she received an employment termination letter² from the Landlord on or about September 17, 2024 terminating her employment on October 26, 2024. She understood this letter informed her she was required to vacate the unit within seven days of her last day of work.

Analysis and Legislation

11. Sections 93 and 94 of the *Residential Tenancies Act, 2006* (the “Act”) provides as follows:

93(1) If a landlord has entered into a tenancy agreement with respect to a superintendent’s premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated.

(2) A tenant shall vacate a superintendent’s premises within one week after his or her tenancy is terminated.

(3) A landlord shall not charge a tenant rent or compensation or receive rent or compensation from a tenant with respect to the one-week period mentioned in subsection (2).

94 The landlord may apply to the Board for an order terminating the tenancy of a tenant of superintendent’s premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

12. Section 93(2) of the Act makes it clear that superintendents must vacate the unit within one week after employment ends. When a tenant does not vacate a superintendent unit pursuant to the Act, a landlord is entitled to file an application under section 94 of the Act for termination of the tenancy.

13. The first employment contract submitted by the Tenant’s representative delineates the Tenant’s responsibilities as superintendent, the remuneration to be provided, the terms governing termination, and the applicable confidentiality obligations. The second employment contract likewise enumerates the employee’s duties and further provides, in part: “The Employee shall serve the Company in the position of Live-In Superintendent in accordance with the terms herein.” Based on the Tenant’s evidence, she understood that she was required to reside in a unit within the residential complex and that a portion of her remuneration consisted of a credit applied toward the monthly rent.

14. The employment termination letters submitted into evidence by the Landlord’s representative expressly advise the Tenant that, as a result of a corporate restructuring, her employment would be terminated effective October 26, 2024, and that she would be required to vacate the unit no later than seven days following the termination date. Although the first letter bears the Tenant’s former address, I find that the Tenant would have recognized it as

² Landlord’s evidence - DOC-5358602

such and was aware of her correct address at the time the letter was issued. In addition, the Tenant acknowledged receipt of the letter and confirmed her understanding of its contents.

15. The Landlord's representative asserts that the rental unit was incidental to the Tenant's employment and that her employment terminated on October 26, 2024. The Tenant subsequently vacated the unit on September 30, 2025, following the issuance of the original order. The Landlord's representative further submits that section 93 of the Act expressly prescribes the obligations imposed upon a landlord when an employee's occupancy ends, and that the Landlord has fully complied with all mandatory statutory requirements.
16. The Tenant's representative contends that there is a marked discrepancy between the two employment contracts, noting that the first specifies that a staff apartment would be provided to the Tenant, whereas the second contains no reference to a superintendent's unit. He submits that the superintendent's unit is not identified with sufficient specificity and, accordingly, the Landlord has failed to satisfy the mandatory requirements set out in section 93 of the Act. He argues that no tenancy agreement exists between the Landlord and the Tenant, which he asserts is the initial prerequisite under the provision and therefore the Landlord's application should be dismissed and the Tenant be put back into possession of the unit.
17. While superintendent is not defined anywhere in the Act, "superintendent's premises" is defined in subsection 2 (1) as follows:

"superintendent's premises" means a rental unit used by a person employed as a janitor, manager, security guard, or superintendent and located in the residential complex with respect to which the person is so employed;

18. While the superintendent's premises need not be specially designed as such, as the Ontario Divisional Court has repeatedly held, there must nonetheless be a connection between the rental unit and the job as superintendent: if the tenancy pre-existed the employment as superintendent, then the unit will not be a superintendent's premises. In this case, the Tenant was not a tenant before her employment commenced which, in my view, concludes the unit provided to the Tenant can be considered a superintendent's unit.
19. The Act defines a tenancy agreement as a written, oral, or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.
20. Based on the evidence before me, I am satisfied on a balance of probabilities that an implied tenancy agreement between the Landlord and the Tenant existed. The Tenant was clearly aware living accommodation was provided to her by way of her employment, and the employment contract sets out that the Tenant was a live-in superintendent.
21. The Act defines "rent" as the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit and for any services and facilities and any privilege, accommodation or thing that the landlord provides for the tenant in respect of the occupancy of the rental unit, whether or not a separate charge is made for services and facilities or for the privilege, accommodation or thing. In this case, it is unmistakably clear that the Tenant paid no rent to the Landlord. The unit was expressly provided as part of her compensation for performing

the duties of a superintendent, and both parties acknowledge this arrangement without dispute.

22. Section 202 of the Act requires the Board to determine the true substance of all transactions and activities relating to a residential complex or rental unit, including assessing the good faith of the parties. In doing so, the Board may look beyond the outward form of any agreement and consider the overall pattern of conduct connected to the unit. In this case, and although the two employment contracts contain some ambiguity, the Tenant's own evidence indicates that she understood her responsibilities as a superintendent, that her role required her to reside in the residential complex, and that her right to occupy the unit would end when her employment concluded. This consistent understanding provides a clear basis for assessing the nature of the arrangement.
23. For the reasons outlined above, I am satisfied on a balance of probabilities that the Tenant was employed as a live-in superintendent and that her employment ended on October 26, 2024. The Tenant continued to occupy the rental unit after her employment was terminated and ultimately vacated the unit on September 30, 2025. Accordingly, the tenancy shall be terminated effective October 26, 2024, the date the Tenant's employment ended.
24. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered and given it the appropriate weight when making my determinations.

Adjudicative Approaches to Daily Compensation in the case of Overholding Superintendents

25. The Landlord requests daily compensation for each day the Tenant stayed in the rental unit after November 2, 2024, being one week after the termination of employment and tenancy until September 30, 2025, the date the Tenant vacated the rental unit.
26. When considering the Landlord's request for daily compensation, in addition to Section 93 of the Act, the following sections are relevant:

94 The landlord may apply to the Board for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

86 A landlord is entitled to compensation for the use and occupation of a rental unit by a tenant who does not vacate the unit after his or her tenancy is terminated by order, notice or agreement.

87(3) If a tenant is in possession of a rental unit after the tenancy has been terminated, the landlord may apply to the Board for an order for the payment of compensation for the use and occupation of a rental unit after a notice of termination or an agreement to terminate the tenancy has taken effect.

27. One approach relies on an interpretation of the termination of the tenancy by operation of law and was aptly described in *Re File No. SOL-71793-20* (August 18, 2016) De LeonCulp:

6. Section 86 states that a landlord is entitled to compensation for use and occupation after termination of a tenancy by order, notice or agreement. Subsection 87 (3) allows a landlord to apply for compensation for use and occupation of a rental unit after a notice of termination or an agreement to terminate the tenancy has taken effect.

7. However, a superintendent's tenancy is terminated by operation of law, not by notice or agreement. Therein lies the rub.

8. While the Landlords have applied under Section 94 of the Act for an order terminating the tenancy, and Section 86 may arguably apply if an order terminating the tenancy ensues, Section 86 cannot be enforced apart from Subsection 87 (3) of the Act. Subsection 87 (3) does not apply to a superintendent's tenancy, as the same is not terminated by notice or agreement. It is clear from a contextual reading of Section 86 that compensation is only available where a tenancy is terminated by notice, agreement or by a Board order confirming termination of the tenancy by notice or agreement.

9. I conclude that there is no statutory basis to order compensation from an overholding tenant after termination of a superintendent's tenancy.

10. The Board reached the same conclusion in *Country Club Towers v. Khachatryan*, [2001] O.R.H.T.D No. 75 and *Re File No. TSL-02245-09-RV* (September 15, 2010), Rozehnal.

28. Under this approach, once their employment was terminated, the Tenant's tenancy was terminated by operation of law. As a result, no relief for daily compensation was available to the Landlord as the tenancy did not terminate by way of agreement or notice but rather by operation of law and there is no statutory authority under which to award daily compensation for a tenancy that terminates by operation of law.
29. An alternative approach, as described below, looks to interpretation of the above relevant provisions in a broader context.
30. Once a superintendent is no longer employed, the employment relationship is at an end and what remains is the landlord and tenant relationship. Section 94 provides that the landlord may apply for an order to terminate the tenancy of a tenant of superintendent's premises and evict the tenant if the now former superintendent does not leave within one week of the termination of their employment. The termination of the tenancy and an order evicting the former superintendent are two separate forms of relief.
31. There is no discretion provided under the Act with respect to the date the tenancy terminates, s. 93(1) provides the date of termination is the date the employment ends. However, section 94 provides that the Landlord may obtain an order terminating the tenancy. Any order obtained is then caught under s. 86, termination of tenancy by order of the Board, and so the landlord is entitled to compensation for the time the unit is used and occupied after the tenancy is vacated.
32. At this point it is important to recall the purposes of the Act. Section 1 of the Act provides:

1(1) The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes.[Emphasis added]

33. Interpreting the Act to recognize the right of a landlord to daily compensation but not permitting a landlord to actually apply for this compensation for an overholding former superintendent would in essence permit the tenant to reside for free and does not provide for adjudication of this dispute.
34. The Board is mandated to consider all circumstances before granting an order for eviction. Where a Landlord applies under section 94 for an order evicting an overholding former superintendent, refusal or postponement of the eviction can be ordered. Without a basis to apply for daily compensation, the Landlord may be left without any compensation for the occupation of the rental unit.
35. As a result, I adopt the second adjudicative approach and find there is authority to award daily compensation in the case of overholding former superintendents.

What is the Appropriate Daily Compensation?

36. Having held that there is a basis under which to award daily compensation, the question then becomes, "What is the appropriate rate for daily compensation to be awarded in the circumstances of this case?"
37. The Landlord seeks daily compensation based on a comparable market rate for the rental unit. However, the only evidence provided was the rent ledger, which reflects the rent charged after the Tenant's employment ended. On its own, this does not adequately establish the market rent for the relevant period, and I therefore assign this evidence limited weight in determining the appropriate daily compensation. That said, the rent ledger does show a monthly rent credit of \$1,050.62 during the Tenant's employment. Although this amount is not specified in the employment contracts, I accept that the monthly rent for the superintendent's unit is \$1,050.62.
38. As a result, I find the monthly rent is \$1,050.62.
39. There is no last month's rent deposit.
40. The Tenant stayed in the unit for 330 days after her employment ended on October 26, 2024 and she vacated the unit, being September 30, 2025. Seven of these days are not compensable under s. 93(2) of the Act and the Landlord does not seek compensation for these days. The Landlord is entitled to an order for the remaining 323 days at the rate of \$34.54 a day ($\$1,050.62 \times 12/365$) for a total of \$11,156.42.

Costs

41. With respect to the costs of the application, because the Tenant did not vacate within the statutory one-week period and only did so after this application was brought, I find the Landlord is entitled to the filing fee for this application.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 26, 2024, the date the Landlord terminated the Tenant's employment as a superintendent.
2. The Tenant shall pay to the Landlord \$11,156.42, which represents the total amount of daily compensation for the use of the unit starting November 2, 2024, one week following termination of the employment and tenancy, to September 30, 2025, the date the Tenant moved out of unit.
3. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenant must pay the Landlord is \$11,342.42.
5. If the Tenant does not pay the Landlord the full amount owing on or before June 28, 2026, the Tenant will start to owe interest. This will be simple interest calculated from June 29, 2026 at 4.00% annually on the balance outstanding.

June 17, 2026
Date Issued

Susan Priest
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.