



Order under Section 69 / 88.2 Residential Tenancies Act, 2006

Citation: FERNANDES v MACKAY, 2026 ONLTB 48668

Date: 2026-06-30

File Number: LTB-L-032433-26

In the matter of: LOWER, 19 LEWIS ST
TORONTO ON M4M2H2

Between: ANA MARIA FERNANDES

Landlord

And

STUART MACKAY

Tenant

ANA MARIA FERNANDES (the 'Landlord') applied for an order to terminate the tenancy and evict STUART MACKAY (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

The Landlord also applied for an order requiring the Tenant to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement (*L2 Application Section 88.2*).

This application was heard by videoconference on June 17, 2026.

The Landlord's Legal Representative, Berkan Altun, and the Tenant attended the hearing.

Determinations:

Request to Amend the Application

1. The Landlord sought to amend the L2 application to include additional unpaid utility costs incurred after the application was filed. The amount sought on the application was \$300.53 and the Landlord submits that the Tenant, as of the hearing date, owes the Landlord \$818.34 for utility costs. Given that the Tenant did not contest the request to amend the application and agreed with the amount the Landlord was seeking, the Landlord's request to amend the application to claim \$818.34 for unpaid utility costs was granted.

L1 Application – Non-Payment of Rent

2. 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.
3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$1,700.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$55.89. This amount is calculated as follows: $\$1,700.00 \times 12$, divided by 365 days.
6. The Tenant has paid \$13,548.52 to the Landlord since the application was filed.
7. The rent arrears owing to June 30, 2026, are \$514.00. The Tenant agreed with the amount of arrears.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,700.00 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.
10. Interest on the rent deposit, in the amount of \$61.96 is owing to the Tenant for the period from December 1, 2024, to June 17, 2026.
11. Given that the Tenant did not contest the arrears and testified that he could pay the arrears and costs in full by June 20, 2026 or at the latest, by June 27, 2026, there is no need for the Board to address section 83 of the Act for the purpose of the L1 application. A standard 11-day order for the L1 application will be issued. the Tenant is provided more time than he testified to at the hearing to pay the Landlord the arrears and costs to void the L1 application portion of this order.

L2 Application – Utility Costs (Section 88.2)

12. The Landlord and Tenant agreed that the Tenant has failed to pay the utility costs associated with the tenancy in the amount of \$818.34. As such, the Landlord is entitled to these costs and an order will issue accordingly.

L2 Application – Persistent Late Payment of Rent

13. The Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. The rent has been paid late 12 times between January 2025 and June 2026 for a total 12 times in 18 months.
14. Based on the evidence before the Board and given the Tenant's acknowledgment of his late payments, we find that the Tenant has persistently failed to pay his rent on time. The rent is due on the first day of the month and the Tenant has failed to pay his rent on time and in full more often than not.

Relief from Eviction

15. We have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.
16. The Tenant sought an opportunity to preserve the tenancy, committing to paying the rent on time and in full going forward.
17. The Tenant testified that he lives alone. Through his various sources of income, he estimates that, moving forward, his monthly income would be approximately \$2850 per month. Based on the Tenant's testimony, we are satisfied that his household income will be sufficient to cover his monthly rent and essential expenses.
18. The Landlord sought an eviction order submitting that the tenancy is no longer viable. The Landlord's Legal Representative submitted that the Tenant's lack of payments and/or late payments have impacted the Landlord's ability to pay their staff but did not provide any specifics or documentary evidence with respect to any financial hardship the Landlord has or is experiencing.
19. The Divisional Court has found that eviction should be ordered as a remedy of last resort, only ordered where it is not possible to bring a tenancy back into good standing. [*Britannia Glen Co-operative Homes v. Singh*, cited in *Toronto Community Housing Corp. v. Thompson*, [2003] O.R.H.T.D. No. 145, *James Aylmer Langford v. Lesley Phipps and Larry Gilpin*, [1992] O.J. No. 4184 (Ont. Gen. Div.)]
20. In this case, we find that the Tenant should be given an opportunity to preserve the tenancy, provided the Tenant meets the conditions set out below. In our view, the Tenant has shown his willingness and ability to pay the Landlord with substantial payments made to the Landlord since the application was filed. We found the Tenant to be credible and this is the first appearance/application before the Board for this tenancy. The prejudice to the Landlord is mitigated through the Landlord's ability to terminate the tenancy under section 78 of the Act if the order is breached.

It is ordered that:L1 Application – Non-Payment of Rent

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:**
 - \$700.00 if the payment is made on or before June 30, 2026. See Schedule 1 for the calculation of the amount owing.

OR

- \$2,400.00 if the payment is made on or before July 11, 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 July 11, 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 July 11, 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 \$1,811.83. See Schedule 1 for the calculation of the amount owing. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$55.89 per day for compensation for the use of the unit starting June 18, 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 July 11, 2026, then starting July 12, 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 July 12, 2026.

L2 Application – Persistent Late Payment of Rent

9. If the Tenant voids the L1 portion of the order in accordance with paragraph 2 above, the tenancy shall continue on the following terms.
10. The Tenant shall pay the Landlord the monthly rent due on or before the first day of the month for the period from July 1st, 2026, to and including June 30th, 2027.
11. If the Tenant fails to make any of the payments in paragraph 10 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenant, for an order terminating the tenancy and evicting the Tenant.

L2 Application – Utility Costs

12. On or before July 11, 2026, the Tenant shall pay to the Landlord \$818.34, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the unpaid utility costs.
13. If the Tenant does not pay the Landlord the full amount owing on or before July 11, 2026, the Tenant will start to owe interest. This will be simple interest calculated from July 12, 2026, at 4.00% annually on the balance outstanding.

June 30, 2026

Date Issued

Richard Dehaan

Member, Landlord and Tenant Board

Vicky Liu

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 of the Tenant expires on January 12, 2027 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 30, 2026

Rent Owing To June 30, 2026	\$14,062.52
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,548.52
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$700.00

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 11, 2026

Rent Owing To July 31, 2026	\$15,762.52
Application Filing Fee	\$186.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,548.52
Total the Tenant must pay to continue the tenancy	\$2,400.00

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

Rent Owing To Hearing Date	\$13,312.65
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$13,548.52
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,700.00
Less the amount of the interest on the last month's rent deposit	- \$61.96
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$(1,811.83)
Plus daily compensation owing for each day of occupation starting June 18, 2026	\$55.89 (per day)