



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-025169-26

In the matter of: Lower, 197 SOUTHWOOD DR
KITCHENER ON N2E2B2

Between: BDRP Inc. Landlord

And

Randy Chappell Tenants
Bonnie Chappell

BDRP Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Randy Chappell and Bonnie Chappell (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 Application); and
- the Tenants have been persistently late in paying the Tenants' rent; (L2 Application).

This application was heard by videoconference on June 2, 2026.

The Landlord's Agent, Chris Haliburton, the Landlord's Legal Representative, I. Karyakina, and the Tenant, Randy Chappell, attended the hearing

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants 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.
2. As of the hearing date, the Tenants were still in possession of the rental unit.
3. The lawful rent is \$2,375.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$78.08. This amount is calculated as follows: \$2,375.00 x 12, divided by 365 days.
5. The Tenants have not made any payments since the application was filed.
6. The parties agree that the rent arrears owing to June 30, 2026, are \$13,456.25.

7. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
8. The Landlord collected a rent deposit of \$2,375.00 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.
9. Interest on the rent deposit, in the amount of \$122.09 is owing to the Tenants for the period from March 1, 2024 to June 2, 2026.

L2 Application – Persistent Late Payment of Rent

10. It is undisputed that the lawful rent is due on the 1st day of each month. The Landlord claims that the Tenants have either paid rent late or not paid since July 2025 each month.
11. The Tenant, Randy Chappell ('RC'), testified that the Landlord served the Tenants an N1 notice in or around April 2025 which reduced their rent from \$2,375.00 to \$1,383.75 starting July 1, 2025. The Tenants reached out to the Landlord via email twice in April 2025 but did not receive any response from the Landlord until November 2025. Starting July 1, 2025, the Tenant started paying the reduced rent which the Landlord is now claiming as unpaid and as persistently late. Since December 2025 the rent the Tenants paid was applied to the previous arrears from July to November 2025.
12. The Landlord claims they responded to the Tenants email on April 7, 2026, which was to get back to the Tenants, but they never did until November 2025.
13. There is a difference between paying the rent that is due, but not on the date on which it is due (i.e., late payment of rent) and not paying the rent that due at all (i.e., failure to pay rent). While both constitute breaches of the lease by the Tenants, they are conceptually different and may lead to different legal consequences. In *Tataw v. Minto Apartment Limited Partnership*, 2023 ONSC 4238 (Div. Ct.), para 14, Justice Corbett stated:

Persistent late payment of rent, and non-payment of rent, are related but distinct bases for applications before the Board. Landlords are entitled to be paid rent on time, as it falls due. Where an application is brought in respect to current arrears, if the Board finds for the landlord, the usual order is for a voidable order terminating the tenancy: if the Tenants pays up the arrears and further rent accruals by a specified date, then the termination order is voided. Where the Board finds persistent late payment of rent, the Board may terminate the tenancy, or it may impose some other order – for example, for timely future payment of rent, failing which the landlord may seek a termination order.

14. It is true that an N8 notice is said to be given on the basis of persistent late payment of rent. However, strictly speaking, the *Residential Tenancies Act, 2006* (the 'Act') does not speak in those terms. Instead, Section 58(1)(1) of the Act permits a landlord to give a notice of termination where "[t]he Tenants has persistently failed to pay rent on the date it becomes due and payable."

15. Accordingly, an N8 notice is not concerned with whether the rent is persistently paid late. Rather, an N8 notice is concerned with whether the Tenants persistently fails to pay rent on time.
16. I find that the Tenants have persistently failed to pay the rent on the date it became due and payable. I say that because even though I consider that the Tenants were not paying full rent because of the Landlord's mistake, the rent that the Tenants did pay was also paid on multiple dates for those months which shows it was not paid on the day it was due. Therefore, the Landlord has been successful in their claim of persistent late rent payments.

Relief from Eviction

17. I 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.
18. In February 2026, RC suffered a heart attack, and his income had reduced significantly. This has also led to depression and anxiety for RC. RC also has his income garnished by the Canada Revenue Agency, so money is tight. The other Tenant is working and has been throughout the time period claimed in this application. The Tenants grandchildren also come stay with them every other week, at night, when their daughter works night shifts. The Tenants are requesting time to end of June 2026 to find another place to move.
19. The rent arrears are substantial. The Tenants have not been able to make any good faith payments since the application was filed even though one Tenant was working and the other was receiving 70% of his income. I also consider RC's health issues which have shown signs of recovery as the doctors have cleared him for full-time work. There is no reason for me to delay or deny eviction. However, I do want the Tenants to have an opportunity to preserve their tenancy and have a chance at a conditional pay on time order if they void the L1 application.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The tenancy between the Landlord and the Tenants 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:**
 - \$13,642.25 if the payment is made on or before June 30, 2026. See Schedule 1 for the calculation of the amount owing.

OR

 - \$16,017.25 if the payment is made on or before July 7, 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 July 7, 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 Tenants do not pay the amount required to void this order the Tenants must move out of the rental unit on or before July 7, 2026.**
5. If the Tenants do not void the order, the Tenants shall pay to the Landlord \$8,926.32. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. 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 \$78.08 per day for the use of the unit starting June 3, 2026 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlord the full amount owing on or before July 7, 2026, the Tenants will start to owe interest. This will be simple interest calculated from July 8, 2026 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before July 7, 2026, then starting July 8, 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 July 8, 2026.

L2 Application – Persistent Late Payment of Rent

10. If the Tenants void the L1 portion of the order in accordance with paragraph two above, the tenancy shall continue on the following terms.
11. The Tenants shall pay the Landlord the monthly rent due on or before the first day of the month for the period August 1, 2026 to July 1, 2027.
12. If the Tenants fail to make any of the payments in paragraph 11 above, the Landlord may apply under section 78 of the Act, within 30 days of the breach and without notice to the Tenants, for an order terminating the tenancy and evicting the Tenants.

June 26, 2026
Date Issued

Sheena Brar
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 Tenants expires on February 8, 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 Tenants must pay to void the eviction order and continue the tenancy if the payment is made on or before July 7, 2026

Rent Owing To June 30, 2026	\$13,456.25
Application Filing Fee	\$186.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Total the Tenants must pay to continue the tenancy	\$13,642.25

B. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before July 7, 2026

Rent Owing To July 31, 2026	\$15,831.25
Application Filing Fee	\$186.00
Total the Tenant must pay to continue the tenancy	\$16,017.25

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

Rent Owing To Hearing Date	\$11,237.41
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenants paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenants paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,375.00
Less the amount of the interest on the last month's rent deposit	- \$122.09
Less the amount the Landlord owes the Tenants for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenants is entitled to	- \$0.00
Total amount owing to the Landlord	\$8,926.32
Plus daily compensation owing for each day of occupation starting June 3, 2026	\$78.08 (per day)