



## Order under Section 69 Residential Tenancies Act, 2006

**Citation:** NAZERY v KHAROUBA, 2025 ONLTB 2895

**Date:** 2025-01-08

**File Number:** LTB-L-081665-24

**In the matter of:** 4 MENDY'S FOREST  
AURORA ON L4G5A3

**Between:** MINOO NAZERY  
REZA ASADBIKLI

**And**

HALA KHAROUBA  
BAKER QAHWAJI

I hereby certify this is a  
true copy of an Order dated

**JAN 08, 2025**

Landlord and Tenant Board

Landlords

Tenants

MINOO NAZERY and REZA ASADBIKLI (the 'Landlords') applied for an order to terminate the tenancy and evict HALA KHAROUBA and BAKER QAHWAJI (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe (L1 Application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenants because the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date (L2 Application).

This application was heard by videoconference on December 3, 2024 at 9:24 a.m.

The Landlords Minoo Nazery, Reza Asadbikli, the Landlord's representative Naseer Ahmed, licensed paralegal and the Tenants Hala Kharouba and Baker Qahwaji attended the hearing. Paria Asabikli also attended the hearing and acted as a translator for the Landlords.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

### Preliminary Issues:

#### *Adjournment Request*

1. As a preliminary matter, the Tenant requested an adjournment of the proceedings citing a lack of time to prepare for the hearing retain witnesses, claiming the Tenant had not received the Notice of Hearing until October 16, 2024. Taking in submissions from both parties at this hearing, I determined the adjournment was not to be granted. My reasons for denying this adjournment are as follows.

2. The Landlord's representative objected to the adjournment due to the prejudice an adjournment would cause the Landlord as the arrears were significant. The Landlord's representative further claimed the Tenants had more than enough time to secure any witnesses and prepare for a hearing which was straight forward in nature and that all evidence had been disclosed in a package to the Tenants more than 7 days before the hearing.
3. Section 183 of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
4. I find that the Tenant received adequate notice of the hearing and had a reasonable opportunity, approximately 6 weeks from receiving the notice of hearing on October 16, 2024, to secure any witnesses in advance of the hearing as well as prepare any documentation needed in advance of the hearing. Both sides were present at the hearing and the Tenants had received the Landlords' evidence at least 7 days before the hearing in accordance with LTB Rule of Procedure 19. I am therefore satisfied that the Tenants had an adequate opportunity to know the issues and be heard on the matter.

#### *Board's Maximum Monetary Jurisdiction*

5. The total amount owed by the Tenant to the Landlord exceeds the Board's monetary jurisdiction. Subsection 207(1) of *the Act* limits the monetary jurisdiction of the Board to that of the Small Claims Court; that amount is \$35,000.00.
6. At the outset of the hearing, the Landlord's representative indicated that they understood the maximum amount the Tenant could be ordered to pay is \$35,000.00, which is the monetary jurisdiction of the Board and agreed to waive any amount owing over an about that amount.

#### **Determinations:**

##### L1 Application

1. 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.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$3,900.00. It is due on the 30th day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$128.22. This amount is calculated as follows: \$3,900.00 x 12, divided by 365 days.
5. The Tenant has not made any payments since the application was filed.
6. The rent arrears owing to December 30, 2024 are \$35,100.00.

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 \$3,800.00 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.
9. Interest on the rent deposit, in the amount of \$265.79 is owing to the Tenant for the period from August 10, 2021 to December 3, 2024.

*Relief from eviction*

10. 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 postpone the eviction until January 30, 2025 pursuant to subsection 83(1)(b) of *the Act*.

Serious Breach of Landlord's Responsibilities

11. The Tenant, Baker Qahwaji ("BQ"), alleged that there have been ongoing maintenance problems with the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of *the Act*. That section states that the Board must deny eviction when "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
12. The events alleged by the Tenant include pest infestation and water accumulating in the unit causing damage and mould. BQ testified the rat infestation occurred between May 2024 and June 2024 and while the issue was partially resolved two days afterwards when BQ called an exterminator at his own expense, the Landlord has not fully resolved the issue. BQ further testified on or about August 29, 2024, a leak occurred as a result of a broken dishwasher, causing water damage and mould to accumulate in the kitchen area and this has not been addressed by the Landlord.
13. The Landlord's representative submitted the Tenant was exaggerating about the severity of the issues and that no documentary evidence was provided to support the Tenant's claims.

*Analysis*

14. Subsection 83(3)(a) of *the Act* speaks in the present tense, thus I cannot consider past breaches that have been remedied. Although the Tenant claims the problems are ongoing, the evidence before me suggests the rat issue was addressed using an exterminator mitigating the severity of the issue. With respect to the water damage issue, the use of the word "serious" in subsection 83(3)(a) establishes that not all breaches of the Landlord's responsibilities can be considered; only those determined by the Member to be serious will invoke section 83(3) of *the Act*. Even if all of these issues were ongoing, I am not satisfied based on the Tenant's evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlords under the *Act*. No documentary evidence was provided by the Tenant to support his testimony about the severity of the damage or alleged mould issue.

Other Circumstances

15. The Tenant testified the Tenant was diagnosed with cancer in November 2022 and as a result was no longer able to work and that this led to the arrears. Since then, the Tenant works part time as a deliver driver. The Tenant further testified the Tenant has a surgery scheduled for January 16, 2025 and expressed that it would be a hardship to find a new affordable unit during the recovery period and therefore requested additional time to complete a housing search. I accept that finding a new rental unit will be challenging for the Tenant. The Tenants have no children.
16. The Landlord's representative submitted that the amount of arrears is significant and any delay would be prejudicial. The Landlord testified he was experiencing significant financial challenges as a result of the arrears; and, in absence of receiving the lawful monthly rent from the Tenants, has accumulated approximately \$27,000.00 in debt, utilizing a line of credit to assist in making monthly mortgage payments. Entered into evidence were bank statements dated August 16, 2024, account activity statements from lines of credit dated September 17, 2024 and August 23, 2024 to support the Landlord's testimony. The Landlord further testified this is causing him anxiety and lack of sleep. The Landlord's representative submitted into evidence medical history documentation dated October 9, 2024 to support the Landlord's testimony that he was prescribed sleeping pills.
17. Based on the BQ's own testimony during cross-examination, the Tenant's household income is approximately \$2,000.00 per month and the Tenants provided no documentary evidence to substantiate how they would be able to repay the arrears as the Tenant's stated income is significantly less than the monthly rent. Therefore, I find this tenancy is not viable. I am however persuaded by the Tenant's testimony with respect to their family's health challenges, and that it would not be unfair to postpone the eviction until January 30, 2025. This will provide some additional time for the Tenant to complete a housing search for an affordable unit that is appropriate for the Tenant's family that does not significantly prejudice the Landlord, whose financial circumstance I acknowledge are also challenging at present.

L2 Application

18. At the hearing, the Landlord's representative requested to withdraw their L2 Application.
19. As the request to withdraw the L2 Application was undisputed by the Tenant, the Board consented to the request.

**It is ordered that:**

L1 Application

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:**

- \$39,186.00 if the payment is made on or before January 30, 2025. See Schedule 1 for the calculation of the amount owing. This is an amount that the Tenants can choose to pay if they choose not to vacate the rental unit. The Board is not ordering this amount to be paid and is thus not subject to the Board's monetary jurisdiction. Due to the Board's Monetary jurisdiction, the amount is adjusted herein.
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 January 30, 2025 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 January 30, 2025.**
  5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$31,733.09. 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 Tenant. See Schedule 1 for the calculation of the amount owing.
  6. The Tenant shall also pay the Landlord compensation of \$128.22 per day for the use of the unit starting December 4, 2024 until the date the Tenant moves out of the unit.
  7. If the Tenant does not pay the Landlord the full amount owing on or before January 30, 2025, the Tenant will start to owe interest. This will be simple interest calculated from January 31, 2025 at 5.00% annually on the balance outstanding.
  8. If the unit is not vacated on or before January 30, 2025, then starting January 31, 2025, 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 January 31, 2025.

L2 Application

10. The L2 Application having been withdrawn, the Board's file on the L2 Application is closed.

**January 8, 2025**  
**Date Issued**

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Greg Witt  
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 July 30, 2025 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 January 30, 2025**

Rent Owing To January 30, 2025	\$39,000.00*
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total the Tenant must pay to continue the tenancy</b>	<b>\$35,186.00*</b> <b>(Subject to Board Monetary Jurisdiction)</b>

\* \$39,186.00 is the actual rent owing, plus the filing fee, to January 30, 2025. Due to the Board's Monetary jurisdiction, the amount is adjusted above.

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

Rent Owing To Hearing Date	\$31,712.88
Application Filing Fee	\$186.00
NSF Charges	\$0.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
<b>Less</b> the amount the Tenant paid into the LTB since the application was filed	- \$0.00
<b>Less</b> the amount of the last month's rent deposit	- \$3,800.00
<b>Less</b> the amount of the interest on the last month's rent deposit	- \$265.79
<b>Less</b> the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
<b>Less</b> the amount of the credit that the Tenant is entitled to	- \$0.00
<b>Total amount owing to the Landlord</b>	<b>\$27,833.09*</b>
Plus daily compensation owing for each day of occupation starting December 4, 2024	\$128.22 (per day)

\*\* Once factoring in daily compensation, the amount owing may exceed the Board's Monetary jurisdiction. In this case, the amount ought to be adjusted not to exceed the Board's Monetary jurisdiction should the Tenancy be terminated.