



### Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: [REDACTED]

Date: 2026-06-04

File Number: [REDACTED]

In the matter of: [REDACTED]

Between: [REDACTED]

I hereby certify this is a  
true copy of an Order dated  
**JUN 04, 2026**  
Landlord and Tenant Board

Landlord

And

[REDACTED]

Tenants

#### Review Order

[REDACTED] (the 'Landlord') applied for an order to terminate the tenancy and evict [REDACTED] (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

The application was resolved by order [REDACTED] issued on January 15, 2026.

On February 6, 2026 the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On February 9, 2026 interim order [REDACTED] was issued, staying the order issued on January 15, 2026.

The request to review was heard on March 23, 2026 and granted by interim review order [REDACTED] issued April 2, 2026. The Landlord's application was ordered to be heard *de novo* (anew).

This application was heard *de novo* by videoconference on May 6, 2026.

The Landlord's agent [REDACTED], the Landlord's legal representative, Evgeny Aptekar ('EA'), and the Tenants attended the hearing.

**Determinations:**Merits of the Original Application

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. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on November 17, 2025. Rent arrears are calculated up to the date the Tenants vacated the unit
4. The lawful rent was \$1,200.00. It was due on the 1st day of each month.
5. The Tenants have paid \$200.00 to the Landlord since the application was filed.
6. There was dispute between the parties as to the arrears owing. The dispute, in substance is not about the rent charged and rent paid, but is about whether there is a last month's rent deposit being held by the Landlord.
7. This is a unique situation where the Tenants change the parts of the rental unit they were renting over time. The Tenants initially rented a room inside unit 5, then the entirety of unit 5, and then a single room in unit 5 again. Each time the parts of unit 5 being rented changed, the parties entered into a new tenancy agreement reflected the change in what was being rented, and the rent being charged.
8. The parties first entered a lease for what is described as unit "5A", a room within unit 5, for a term beginning on September 16, 2024 (see DOC-7320661, pp. 17-31). The monthly rent agreed to was \$1,295.00, and the Tenants were required to pay a rent deposit of \$1,295.00 at the time. The evidence was that after this, the parties agreed that the Tenants would rent all of unit 5, and they did so with the Landlord's agreement, from November 24, 2024 to February 29, 2025. They signed a new lease and agreed to a new rent of \$3,000.00 relative to this period. The parties then agreed that, starting March 1, 2025, the Tenants would rent only a bedroom in unit 5 again. Another lease agreement was signed, agreeing to monthly rent of \$1,200.00 for unit "5B", which is a room in unit 5 (see DOC-7052655). LE was not certain if the rooms described as "5A" and "5B" in the respective agreements are in fact the same room, but this is not material to the issues in the application, because both are rooms in unit 5.
9. There was an issue at the hearing as to whether each change in floor space and rent, together with the "new" leases signed by the parties, amounted to the end of one tenancy and the start of another each time, or if these were just changes to an existing and ongoing tenancy.
10. A residential tenancy can only be terminated in a manner permitted by the *Residential Tenancies Act, 2006* (the 'Act'): ss. 37(1), *Residential Tenancies Act, 2006*. One way that a tenancy can be terminated is by agreement of the parties: ss. 37(3), *Residential*

*Tenancies Act, 2006*. It was suggested that the parties simply agreed to end one tenancy and start a new one when the floor space was changing.

11. There was no evidence presented that this was an explicit agreement made at any point, aside from the new leases that were signed.
12. The LTB is mandated to ascertain the real substance of all transactions and the good faith of the participants, and in so doing may disregard the outward form of a transaction and have regard to the pattern of activities related to the rental unit or residential complex: s. 202, *Residential Tenancies Act, 2006*.
13. In this case, I find that the substance of these transactions was not the end of a tenancy and the beginning of another each time the parties agreed to change the floor space. The substance of the agreements were adding and then removing floor space as a facility or thing included in the rent, and the rent was accordingly increased and decreased with the agreed change in floor space.
14. The parties never intended, at the relevant times, to terminate their landlord and tenant relationship, and only intended to change what portions of unit 5 were being rented. Increases and decreases in floor space, and corresponding rent increases or decreases, are specifically contemplated and permitted by the Act: see ss. 123 & 125, *Residential Tenancies Act, 2006*; s. 16, *General, O. Reg 516/06*.
15. The Landlord's position was that the \$1,295.00 rent deposit was taken into account at the end of the second term the tenancy, when the Tenants ceased renting all of unit 5 and returned to renting only a room in unit 5. The Act, however, requires that a rent deposit be applied to the rent for the last month of the tenancy. It cannot be applied to the last month of a term of the tenancy: see ss. 106(10), *Residential Tenancies Act, 2006*. Application of rent deposits to the last month of the tenancy is a statutory requirement, which parties are not permitted to contract out of: ss. 3(1), *Residential Tenancies Act, 2006*.
16. I therefore find that the Landlord collected a rent deposit of \$1,295.00 on September 16, 2024. The Landlord is still holding this rent deposit, and no interest has been paid on the deposit.
17. This leads to another issue. Since the Landlord cannot have applied the rent deposit to the rent charged for another month, that means that there is an additional \$1,295.00 in unpaid rent that accrued during the tenancy, but that was not claimed in the Landlord's application.
18. A letter from EA to the Tenants dated September 25, 2025 was entered as evidence, describing the rent charged and paid from the outset of the tenancy (though the letter describes the terms as separate tenancies): see DOC-6604942. The letter shows that at the end of the first term the Tenants had a credit balance of \$302.17.
19. By the end of February 2025, after renting all of unit 5 for \$3,000.00 per month, the Tenants had accumulated rent arrears of \$3,495.00. The letter states that the Landlord is applying the rent deposit to the amount outstanding, and waiving the remaining arrears owing to that date.

20. The Tenants took the position that this meant the Landlord was waiving all arrears owing at the time. I disagree. The explicit wording of the letter is that the Landlord waived all arrears owing, *except* for \$1,295.00, relative to which the Landlord purported to apply the rent deposit. Although the Landlord was not permitted to apply the deposit at the time, I do not accept that this means the Landlord also voluntarily waived that \$1,295.00.
21. While the Landlord was not permitted to apply the rent deposit at the time, the Tenants were still obligated to pay the rent owing. Under the circumstances, the application is amended pursuant to rule 1.6(h) of the LTB's *Rules of Procedure* to add this additional \$1,295.00 in rent arrears as an amount claimed in the application. I informed the parties at the hearing that I was considering amending the application in this way, and the parties had the opportunity to make submissions about this.
22. In the circumstances, this amendment is appropriate. I do not find that it is prejudicial to the Tenants, as they were still permitted to present all relevant evidence as to the rent charged and paid over the course of the tenancy, and to make their submissions as to what amount is ultimately owing. I also find it to be fair and just to make this amendment so that this order can accurately reflect the total arrears owing for this tenancy, which has ended.
23. At the outset of the tenancy, I therefore find that the Tenants paid a rent deposit of \$1,295.00.
24. For the reasons set out above, to February 29, 2025, the Tenants owed rent arrears in the amount of \$1,295.00.
25. From March 2025 to October 2025, the lawful rent charged was \$9,600.00 (\$1,200.00 x 8 months).
26. The Tenants are also responsible for the rent for November 1-17, 2025, as the tenancy ended on November 17, 2025. The daily compensation rate is \$39.45 (\$1,200.00 x 12 divided by 365). This means the Tenants were lawfully charged \$370.75 for this period in November 2025.
27. The lawful rent charged for the period March 1 2025 to November 17, 2025 was therefore \$10,270.65. The Tenants paid a total of \$8,368.00 in rent for this period (this includes \$200.00 paid after the application was filed), bringing the rent arrears for this period to \$1,902.65. The rent arrears to the end of the tenancy are therefore \$3,197.65 (\$1,902.65 + \$1,295.00).
28. The rent deposit must be applied to the amount owing, and the Landlord also owes interest on the rent deposit in the amount of \$35.18 for the period September 16, 2024 to November 17, 2025. This amount is also applied to the arrears owing.
29. The rent arrears owing to November 17, 2025 are therefore \$1,867.47 (\$3,197.65 - \$1,295.00 - \$35.18).
30. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated as of November 17, 2025, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$2,053.47. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
3. If the Tenants do not pay the Landlord the full amount owing on or before June 15, 2026, the Tenants will start to owe interest. This will be simple interest calculated from June 16, 2026 at 4.00% annually on the balance outstanding.

**June 4, 2026**  
**Date Issued**

---

Mark Melchers  
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.

**Schedule 1  
SUMMARY OF CALCULATIONS**

**A. Amount the Tenant must pay as the tenancy is terminated**

Rent Owing To Move Out Date	\$2,067.47
Application Filing Fee	\$186.00
<b>Less</b> the amount the Tenant paid to the Landlord since the application was filed	- \$200.00
<b>Total amount owing to the Landlord</b>	<b>\$2,053.47</b>