



**Order under Section 89 / 88.1
Residential Tenancies Act, 2006**

File Number: LTB-L-038455-23

In the matter of: Rear, 226079 CENTREVILLE RD RR 3
MEAFORD ON N4L0A7

Between: Beatrix Vesely Landlord
Tanya Vesely

And

Samantha Wipperman Former Tenant

Beatrix Vesely and Tanya Vesely (the 'Landlord') applied for an order requiring Samantha Wipperman (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's conduct or that of another occupant of the rental unit or someone the Former Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

Beatrix Vesely and Tanya Vesely (the 'Landlord') applied for an order requiring Samantha Wipperman and (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Former Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on December 1, 2025.

The Landlord and the Tenant attended the hearing. The Tenant's Legal Representative Yuliya Molchanova also attended.

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.

Determinations:

Jana Wipperman

1. The Tenant Jana Wipperman is a guarantor and shall be removed from this Application.

The Limitation Period

2. At the hearing the Tenant's Legal Representative testified that the Landlord's Application should be dismissed on the basis that the Tenant vacated the rental unit on May 4, 2022, and the L10 was not filed until May 12, 2023.
3. In support of the Tenant having vacated May 4, 2022, the Tenant's Legal Representative relied on an email from the Tenant to the Landlord indicating that she has vacated the rental unit and shall not return. The email states that the Tenant is "fully out of the house" and "will not be back"
4. It was not disputed by the parties that the Landlord served the Tenant with an N12 Notice of Termination, and the Tenant subsequently served the Tenant with an N9 Terminating the tenancy effective May 13, 2025.
5. The Tenant's Legal Representative testified that Section 89.1.1 requires the Landlord to bring an L10 Application within one year of the Tenant moving out and the Landlord has not done so here therefore the Landlord's Application must be dismissed.
6. While I elected not to dismiss the matter for this reason at the hearing, and heard the matter on the merits, upon further consideration I am not satisfied that the Landlord has complied with the limitation period in the Act.
7. Section 89.1.1 states:
 - (1.1) An application under subsection (1) may be made,
 - (a) while the tenant is in possession of the rental unit; or
 - (b) no later than one year after the tenant or former tenant ceased to be in possession of the rental unit. 2020, c. 16, Sched. 4, s. 21 (1).
8. The limitation period within the Act hinges on the date that the Tenant ceased to be in possession of the rental unit. While to my mind the tenancy was terminated effective May 13, 2022, the date specified in the N9 Notice. I am not satisfied that the day the tenancy terminated is necessarily the same date that the Tenant ceased to be in possession.
9. In *Bakker (1162994 Ontario Inc. v Bakker 2004 CanLII 59995 (ON CA)*, the Ontario Court of Appeal addressed the concept of possession and determined that that "possession of a rental unit refers to some form of control over the unit as demonstrated by factors such as access to, use of, or occupation of the unit"
10. In this case, I find that the Tenant ceased to have access, to, use of, mad occupation of the rental unit as of May 4, 2022. This supports that the Tenant was no longer in possession of the rental unit by this date.
11. Therefore, as the Tenant had clearly indicated to the Landlord on May 4, 2022, that they had vacated the rental unit and would not be returning, the Tenant cannot be said to still be in possession of the rental unit.

12. The Divisional Court also addressed possession in *Highfields Farm Corp. v. Francis*, 2024 ONSC 6732. While this is an appeal related to possession in the context of Section 87(1) of the Act, I am satisfied that it is still relevant in this case.

13. In *Highfields Farm Corp* the court states at paragraph 32

If the Appellant's contention were correct, all tenants would remain "in possession" because, until their tenancy is legally terminated, they have a legal right to re-enter the property even if they previously vacated it. That, however, is not the test established in Bakker.

14. In this case the Tenancy was legally terminated on May 13, 2022. However, I am satisfied that the Tenant ceased to be in possession of the rental unit effective May 4, 2022. The Tenant's email of this date is quite concise and makes it abundantly clear that the Tenant has vacated the rental unit and shall not be returning. Accordingly, I am satisfied that the Tenant ceased to be in possession on May 4, 2022.

15. The Landlord testified that the Tenant was not fully vacated until months after May 13, 2022, because she had left belongings in the rental unit including a couch and L-shaped sofa.

16. The Tenant testified that whole she was offered this sofa by the Landlord and declined at accept it, therefore it remains the property of the Landlord.

17. Ultimately, I prefer the evidence of the Tenant on this point, as I found it be both candid and credible, and I accept that while this sofa was offered to the Tenant by the Landlord it was never accepted by the Tenant. Therefore, I am not satisfied that the Tenant had not vacated the rental unit by leaving the sofa behind or other belongings behind. I also note that a few belongings left in the rental unit does not mean that the Tenant is still in possession, as per *Bakker* possession is tied to factors such as control over the rental unit, such as access, to use of or occupation of the unit, and I am satisfied that the Tenant ceased to be in possession effective May 4, 2022.

18. Therefore, I find that the application was not filed within one year after the Former Tenant ceased to be in possession of the rental unit.

19. Therefore, the Application must be dismissed.

20. While I had canvassed submissions on costs against the Tenant's Legal Representative for potential delay during the merits portion of the proceeding, given that I have found in favour of the Tenant with respect to this preliminary issue, I am not satisfied that it is appropriate to order costs against the Tenant's Legal Representative.

It is ordered that:

1. The Landlord's Application is dismissed.

January 7, 2026

Date Issued

Reid Jackson

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.