



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Betournay v Roth, 2026 ONLTB 2722

Date: 2026-01-08

File Number: LTB-L-035798-25

In the matter of: 3, 823 WELLINGTON ST E
SAULT STE. MARIE ON P6A2N4

Between: William Betournay Landlord

And

Brian Roth Tenant

William Betournay (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Roth (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises

William Betournay (the 'Landlord') also applied for an order requiring Brian Roth (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully by the Tenant, or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on July 15, 2025 at 11:33 am. The Member who presided at the hearing is no longer at the Landlord and Tenant Board. The Associate Chair of the Landlord and Tenant Board has determined that the Member who heard the application is unable to issue a decision in this matter. The matter has therefore been reassigned to me on the Associate Chair's own initiative under the authority of subsection 4.4(1) of the *Statutory Powers Procedure Act*. As the reassigned adjudicator, I have in accordance with the authority of subsection 4.4(6) of the *Statutory Powers Procedure Act* elected to make a decision based on the existing evidentiary record.

The Landlord and the Landlord's legal representative Nathan Chevalier attended the hearing.

As of 11:33 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Landlord and Tenant Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and some of the amounts claimed by the Landlord for wilful damage caused by the Tenant and/or the Tenants guest. Therefore, the Tenant must move out of the rental unit on or before January 19, 2026. The Tenant must also pay to the Landlord \$3,866.84 for the reasonable costs of repairing the damage and replacing the damaged property (\$3,680.84) and the application filing fee (\$186.00).
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. N5 Notice of Termination

Wilful or Negligent Damage

On March 20, 2025, the Landlord gave the Tenant an N5 notice of termination ('N5 notice'). The N5 notice contains the following allegations:

- 1) January 20, 2024 - the Tenant used a baseball bat to break the main entry door handle off then proceeded to smash out the octagon window in the common area. The Tenant kicked in and destroyed your apartment door. It cost approximately \$3,500.00 to repair;
- 2) April 26, 2024 - the Living room window in the Tenant's unit was smashed. A day or two prior, the Tenant had an incident with the police where squatters were removed from the unit. Damages in the amount of \$3,500.00; and
- 3) December 20, 2024 - The Tenant or the Tenant's guest to the rental unit smashed the octagon window in the common area for a second time. Repair cost \$660.20.
4. The Tenant had seven days from the date the N5 notice was served on the Tenant to void the notice by repairing the damage or pay the Landlord the reasonable costs to repair the damage or make arrangements acceptable to the Landlord. The voiding period for the N5 notice is from March 21, 2025 to March 27, 2025.
5. The Tenant did not repair the damage, pay the Landlord the reasonable costs to repair the damage or make arrangements satisfactory to the Landlord within seven days after receiving the N5 notice of termination. Therefore, the Tenant did not void the N5 notice in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (the 'Act').
6. The residential complex is a quadruplex house that contains four separate one bedroom units. The Tenant lives in one of the units on the second floor.
7. The Landlord produced a copy of a video date and time stamped January 21, 2024 at 3:29 am which was obtained through the Landlord's video surveillance. The Landlord also produced a 25-page document brief. The video and the document brief were uploaded to the Tribunals Ontario portal on July 8, 2025 and were marked as exhibits for the hearing.

January 20, 2024 incident

8. The Landlord states the Tenant uses the drug heroin and when he is using drugs, he forgets to take his key when he leaves the residential complex and cannot get into the residential complex, or his rental unit when he returns.
9. The Landlord relies on a video produced for the hearing which is time and date stamped January 21, 2024 at 3:29 am and it shows the glass for an octagon window has been smashed. The Landlord said the date and time for video surveillance taken by the camera is correct and acknowledges the date in the N5 notice notes January 20, 2024. The Landlord confirmed it is the Tenant in the video and describes that the video shows the Tenant inside the common area of the residential complex. The Tenant's feet are bare and the Tenant can be seen going up the stairs carrying a red baseball bat. The video also shows the Tenant walking up the stairs and blood stains are left behind on the stairs from the Tenant walking on the stairs in bare feet.
10. The Landlord testified that the Tenant had used a baseball bat to break the door handle for the main door to enter the common area of the residential complex that the was successful in breaking the door handle and lock for the door. The Landlord states the Tenant also kicked in this door and broke the doorframe. The Landlord further states that the Tenant broke the octagon window glass beside this door to gain entry but that the Tenant did not enter the residential complex through the octagon window, or the main door on this occasion.
11. The Landlords states that on this occasion, the Tenant climbed onto a dumpster and used it to access the roof of the residential complex. The Landlord states that the Tenant then entered the rental unit through the living room window for the rental unit. The Landlord states the Tenant has attempted to repair the doorframe using nails so the door can be closed but the door and doorframe are beyond repair and require replacement. The Landlord states he has replaced the door handle and lock for the main door but has not replaced the door or doorframe because the Landlord believes the Tenant will only break it again.
12. The Landlord produced a copy of a photograph taken of the damage to the door as a result of this incident which shows the door handle is broken off, the door has dents and scratches on it, and there is a metal plate with fasteners which is attached between the door locking mechanism and the doorframe. The Landlord also produced a photograph of the octagon window in which the glass was smashed as a result of this incident.
13. The Landlord produced a copy of an invoice dated April 30, 2024 in the amount of \$455.77 which notes it includes parts and labour for the window replacement. The Landlord states this is for the replacement of the octagon window that was damaged by the Tenant in January 2024.

14. The Landlord also produced a copy of an invoice from a locksmith dated July 9, 2024 in the amount of \$259.90 which notes it is for the replacement of a grade 2 privacy lock and the service call. The Landlord states that he contacted the locksmith to replace the door handle with the lock shortly after the January 2024 incident and the locksmith did attend the residential complex shortly after the Landlord contacted him and performed the repair to the locking door handle. The Landlord states he paid the locksmith by e-transfer the day after the repair. The Landlord states he had to contact the locksmith afterward to request a copy of the invoice and it took the locksmith several months to provide a copy of the invoice to the Landlord.

Analysis

15. Based on the uncontested evidence and testimony of the Landlord, I find the Tenant deliberately broke the octagon window and damaged the door handle, door lock, door, and doorframe for the main entrance common area at the residential complex when the Tenant entered the residential complex on January 21, 2024 at 3:29 am as evidenced on the date/time stamp of the video surveillance produced for the hearing. I accept this is the same incident which is referenced on the N5 notice as occurring on January 20, 2024. This is because the date and time stamp of the video surveillance is almost three and half hours into the new day of January 21, 2024. Therefore, I find the N5 notice substantially complies with the requirements set out within subsection 212(2) of the Act. I do not find the one-day difference has caused any prejudice to the parties based on the incident occurring only 3.5 hours after the date of January 20, 2024 concluded.
16. The video surveillance clearly shows the broken glass in the octagon window, the Tenant appears out of breath and is carrying a baseball bat. The video surveillance does not show the Tenant entering the common area through the main door or through the octagon window which aligns with the Landlord's testimony. The video shows the octagon window glass broken inside the common area and the photograph of the octagon window from the outside shows the glass is jagged and broken. I find the video and photograph evidence support that the Tenant likely did not gain access to the residential complex by reaching through the broken window to open the door because there are no signs of any blood on the jagged broken glass. Based on the video and photo evidence, and the Landlord's testimony, I find are persuasive. I find the Landlord to be credible because the Landlord described in detail how the damage occurred. The Landlord also provided a reasonable explanation regarding how the Tenant caused the damage when attempting to enter the residential complex but then entered through a window on the second floor.
17. The Landlord claims costs relating to this incident in the amount of \$3,500.00. The Landlord produced two receipts totalling \$715.67 (\$455.77 + \$259.90) which relate to the wilful damage caused by the Tenant because of the January 2024 incident. I accept the Landlord's testimony that he incurred these costs to replace the broken octagon window glass in the common area at the residential complex, and the cost to replace the locking door handle for the main entrance at the residential complex. Therefore, the Landlord is entitled to the claimed costs in the amount of \$715.67

18. I accept the explanation the Landlord provided regarding why as of the date of the hearing, he had not replaced the main entrance door, or the doorframe. However, the Landlord did not provide an estimate of what the replacement costs would be for the door and the doorframe. As a result, I am unable to determine what the costs to replace the door and the doorframe are. Therefore, the Landlord is not entitled to its further claimed costs of \$2,784.33 (\$3,500.00 less \$715.67 for the octagon window and door handle/lock) from the wilful damage caused by the Tenant relating to this January 2024 incident.

April 26, 2024 incident

19. The Landlord testified that the Tenant tends to climb onto the dumpster to gain access to the roof and enter the rental unit through the living room window on occasions when the Tenant has forgotten a key. The Landlord states on the date of April 26, 2024, the Landlord is not sure if the Tenant forgot to leave the living room window open, but the window glass for the second floor living room window was smashed on this date. The Landlord states that the living room window contained three panes of glass and the Tenant had broken one of the glass panes. The Landlord states the whole window which included all three panes of glass was replaced.
20. The Landlord produced a copy of an invoice dated July 30, 2024 in the amount of \$2,689.40 and the invoice notes it is for supplying and installing a new picture window. The Landlord states he was initially hesitant to replace this window because he believes the Tenant would likely break it again. The Landlord states he initially decided to tape up the window but the City advised the Landlord that a proper repair/replacement of the window was required. The Landlord states the incurred cost of \$2,689.40 was for the replacement of the whole living room window.

Analysis

21. Based on the uncontested evidence of the Landlord, I find the Tenant deliberately broke the living room window on April 26, 2024 when the Tenant gained access to the rental unit and as a result, this was wilful damage. Based on the Landlord's testimony and a copy of the July 30, 2024 invoice in the amount of \$2,689.40, I accept the Landlord incurred this reasonable cost to replace the entire three-pane glass window. Therefore, the Landlord is entitled to this claimed cost.
22. The Landlord has claimed \$3,500.00 in damages relating to the April 26, 2024 incident. The Landlord is not entitled to any amount beyond \$2,689.40 because the Landlord has not led evidence to support further wilful damage caused by the Tenant relating to the April 26, 2024 incident.

December 20, 2024 incident

23. The Landlord states this is the second time the Tenant has broken the octagon window in the common area of the residential complex.
24. The Landlord testified that the cameras inside the building at the residential complex caught something entering into the building but it could not be established if someone fell

through window after breaking it, or if something was thrown through the window which broke the window and then landed on the floor inside the common area.

25. The Landlord states that the police were involved in the December 2024 incident. The Landlord states that he saw the residential complex on the news. The Landlord states on that date, the Tenant had someone who was found inside the rental unit that had shot a female. The Landlord states in the altercation that occurred on that date, the window was broken by the Tenant or their guest.
26. The Landlord states that he paid to have the octagon window glass replaced a second time but did not have a copy of the invoice for the hearing. The Landlord states this is because the Landlord knows the handyman who replaced the octagon window glass the first time and this handyman is not good with invoicing. The Landlord states he followed up with this handyman after the glass was replaced following the incident on December 20, 2024 but this handyman never provided a copy of the invoice. The Landlord states that he got busy and forgot to follow up further.

Analysis

27. Based on the Landlord's uncontested testimony which I find persuasive and supports that either the Tenant or the Tenant's guest deliberately broke the octagon window glass on December 20, 2024. This is because the Landlord provided a reasonable, detailed explanation which I accept regarding how the octagon window glass was broken on December 20, 2024.
28. I accept the Landlord's testimony that he paid to have the octagon window glass replaced after it was broken on December 20, 2024. I accept the Landlord's explanation why he did not produce a copy of the invoice for the hearing. The Landlord has claimed costs relating to this incident in the amount of \$660.24. The Landlord has not led further evidence to explain why it cost more to replace the octagon window glass this second time compared to when it was replaced after being broken in January 2024 and the Landlord paid \$455.77 to replace it. Therefore, I find the Landlord is entitled to \$455.77 for the replacement of the octagon window glass which was broken on December 20, 2024.
29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
30. There is no last month's rent deposit.
31. The Tenant wilfully caused undue damage to the residential complex on January 21, 2024 when the Tenant deliberately broke the glass for an octagon window in the common area, and broke the door handle, door lock, and damaged the main entrance door and doorframe at the residential complex.
32. The Tenant wilfully caused undue damage to the rental unit on April 26, 2024 when the Tenant deliberately broke the glass for the living room door at the rental unit.
33. The Tenant, or a person whom the Tenant permitted in the residential complex wilfully caused undue damage to the residential complex when they broke the glass for the octagon window in the common area on December 20, 2024.

34. The Landlord has incurred reasonable costs of \$3,680.84 (715.67 for January 21, 2024 incident + \$2,689.40 for April 26, 2024 incident + \$455.77 for December 20, 2024 incident) to repair the damage and replace property that was damaged and cannot be repaired.
35. The Landlord is not entitled to its further claimed costs because the Landlord has not established the amounts for the further claimed costs for the damages. There were no estimates produced by the Landlord to substantiate the additional claimed costs and the Landlord has not established why the cost to replace the octagon window glass a second time following the incident in December 2024 was higher than the cost to replace the octagon window glass resulting for the January 2024 incident.
36. The Landlord requests termination of the tenancy as soon as possible. The Landlord states that one good tenant has already moved out because the Tenant's actions at the residential complex scared this tenant. The Landlord states the continuous damage caused by the Tenant has negatively impacted the Landlord financially. The Landlord states that he has paid out of pocket to replace the damaged items caused by the Tenant. The Landlord states that he purchased the residential complex two years ago as an investment and wants to be able sell it to pay off his mortgage so the Landlord can retire in a few years.
37. The Landlord states he acquired the Tenant who was already living in the rental unit when the Landlord purchased the residential complex. The Landlord states he has attempted to work with the Tenant for a few years without success.
38. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I determined that the Tenant and/or the Tenant's guest have caused wilful damage at the residential complex on three separate occasions in 2024 and this has created a financial strain for the Landlord because the Tenant has not paid the replacement costs for the damage. I find these costs are significant. I also accept the Landlord's testimony that due to the Tenant's actions, it has resulted in a good tenant moving out of the residential complex. The Tenant did not attend the hearing so I am unaware of the Tenant's personal circumstances. I find allowing the Tenant to continue to remain in the rental unit would result in further prejudice to the Landlord as the Landlord has established a pattern that the Tenant causes wilful damage at the residential complex when trying to enter the residential complex/rental unit without a key.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 19, 2026.
2. If the unit is not vacated on or before January 19, 2026, then starting January 20, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 20, 2026.

4. The Tenant shall pay to the Landlord \$3,680.84, which represents the reasonable costs of repairing the damage and replacing the damaged property.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant must pay the Landlord is \$3,866.84.
7. If the Tenant does not pay the Landlord the full amount owing on or before January 19, 2026, the Tenant will start to owe interest. This will be simple interest calculated from January 20, 2026 at 4.00% annually on the balance outstanding.

January 8, 2026
Date Issued

Kimberly Parish
Vice Chair, 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 July 20, 2026 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.