



Order under Section 87 / 89 / 88.1 Residential Tenancies Act, 2006

Citation: Webster v Gammon, 2026 ONLTB 3193

Date: 2026-01-14

File Number: LTB-L-069185-24

In the matter of: 36 COVE RD
FENELON FALLS ON K0M1N0

Between: Alan Webster Landlord

And

Jasmin Morris Gammon Former Tenants
Richard Gammon
Reginald Morris

Alan Webster (the 'Landlord') applied for an order requiring Jasmin Morris Gammon, Richard Gammon and Reginald Morris (the 'Former Tenants') to pay the rent and daily compensation that the Former Tenants owe.

Alan Webster (the 'Landlord') applied for an order requiring Jasmin Morris Gammon, Richard Gammon and Reginald Morris (the 'Former Tenants') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenants' conduct or that of another occupant of the rental unit or someone the Former Tenants 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.

Alan Webster (the 'Landlord') applied for an order requiring Jasmin Morris Gammon, Richard Gammon and Reginald Morris (the 'Former Tenants') 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 Tenants, another occupant of the rental unit or someone the Former Tenants permitted in the residential complex.

This application was heard by videoconference on December 22, 2025.

The Landlord, the Landlord's legal representative, Christina Nastas ('CN'), the Landlord's witness, Kattie Sims ('KS'), the Former Tenant, Richard Gammon ('RG'), and the Former Tenants' legal representative, Nadine Little ('NL')

Determinations:

1. At the outset of the hearing, NL raised several preliminary issues on behalf of the Former Tenants. One of these preliminary issues was that the Landlord's application is statute-barred by the limitation period, because it was filed more than one year after the Former Tenants ceased to be in possession of the unit.
2. The Landlord makes claims in this application under sections 87, 88.1, and 89 of the *Residential Tenancies Act, 2006* (the 'Act'). Applications under each of these provisions are subject to the same limitation period. An application under these provisions may be made no later than one year after the tenant or former tenant ceased to be in possession of the rental unit: ss. 87(1.1)(b); 88.1(2)(b); and 89(1.1)(b), *Residential Tenancies Act, 2006*.
3. The Court of Appeal for Ontario considered the meaning of the phrase "tenant in possession" in *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995 (ON CA):

[19] Some further assistance in defining "tenant in possession" is found by an examination of s. 86(2). That subsection provides that a landlord may be compensated for "the use and occupation" of a rental unit after notice of termination of the lease. A landlord can only be compensated, however, if the tenant is "in possession of the rental unit" when the landlord's application is made. **This suggests that a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.**

[20] **Possession is a difficult concept to define. Both in common and legal parlance, it connotes some form of control over the thing said to be possessed:** e.g. D. Dukelow, B. Nuse, *The Dictionary of Canadian Law* 2nd ed., (1995) Carswell at p. 916; *The Shorter Oxford English Dictionary*, Vol. II (1973) p. 1635. Clearly, **possession in s. 86(1)(b) is not limited to immediate physical control. For example, a tenant who locks up a rental unit and leaves on an extended vacation, continues to exercise sufficient control over that rental unit so as to qualify as a "tenant in possession" for the purposes of s. 86(1)(b).** In my view, **possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit.**

[21] **There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of that rental unit [emphasis added].**

1162994 Ontario Inc. v. Bakker, 2004 CanLII 59995 (ON CA),
paras 18-21

4. The Former Tenants' tenancy was terminated by order of the LTB as of March 31, 2023: see *Webster v. Gammon*, 2023 ONLTB 15423 (LTB file LTB-L-050042-22).
5. The Landlord said that he believes the Tenants are still in possession because the key has not been returned.
6. The Landlord also said that his neighbour said that the Former Tenants kept returning to the unit monthly. He said they were not living there, but could still get in. I note that the evidence about the Former Tenants returning to the unit is hearsay. The statements from the Landlord's neighbour were not made under oath or solemn affirmation, and the substance of the evidence could not be tested on cross-examination. For these reasons I give the hearsay evidence little weight.
7. The Landlord said the unit has been vacant since the Tenants moved out, and he does not know when they moved out. He did say that he entered the unit and took photos on April 5, 2023.
8. RG's evidence was that the Former Tenants vacated the unit on March 31, 2023, in accordance with the order of the LTB. He unequivocally stated that the Former Tenants did not occupy, use, or enter the unit after they moved out.
9. RG said that after the Former Tenants vacated the unit, they reached out to the Landlord to inform him they had moved and to arrange to return the keys. He said the Former Tenants called and left messages for the Landlord over the course of three days, but received no response, so they stopped trying. RG said that he instead went to the Landlord's home and left the keys in the Landlord's mailbox.
10. On a balance of probabilities, I find the Former Tenants moved out of the unit on March 31, 2023, and have not occupied or accessed the unit since that time. I also accept RG's evidence that he left the keys in the Landlord's mailbox shortly after vacating.
11. RG's evidence was clear, cogent, and consistent. The Landlord had no compelling evidence to contradict RG's evidence on these key points. The Landlord said the keys were not returned, but it could be that he was not aware the keys were left in his mailbox and someone else retrieved them, or that the Landlord himself retrieved them but did not know what they were for if he was not informed the keys would be left there.
12. I also note that the Landlord entered the unit on April 5, 2023, after RG said the Tenants vacated, but presented no evidence that anyone was still occupying or in possession of the unit at that time.
13. The Former Tenants did not have access to, use of, or occupation of the unit after March 31, 2023. They retained no form of control over the unit after that time. Beginning on April 1, 2023, there was no longer any connection between the Former Tenants and the rental unit. I therefore find that the Former Tenants ceased to be in possession of the unit as of April 1, 2023.

14. This application was filed on August 1, 2024. This is more than one more after the Former Tenants ceased to be in possession of the unit. The application must therefore be dismissed because it was not filed within the time limitation set out in ss. 87(1.1)(b); 88.1(2)(b); and 89(1.1)(b) of the Act.

It is ordered that:

1. The Landlord's application is dismissed.

January 14, 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.