



**Order under Section 69 / 89
Residential Tenancies Act, 2006**

File Number: LTB-L-083553-25

In the matter of: LOWER, 253 HIGH PARK AVE
TORONTO ON M6P 2S5

Between: Dipa Patel Landlords
Jordan Hopper

and

Katherine Maclean Tenant

Dipa Patel and Jordan Hopper (the 'Landlords') applied for an order to terminate the tenancy and evict Katherine Maclean (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.

The Landlords also applied for an order requiring Tenant to pay the Landlord's reasonable out-of-pocket costs the Landlords has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on December 18, 2025.

The Landlords and the Tenant, and the Tenant's representative, Rachel Wickham, attended the hearing.

Determinations:

1. For the reasons provided below, the Landlords has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.
2. The Landlords requested that their claim for compensation due to damage be amended to \$10,170.00. The Tenant did not object, and I consented to the amendment.
3. The Tenant was in possession of the rental unit on the date the application was filed.

Background

4. On January 1, 2022, the Tenant moved into the rental unit.

5. On September 26, 2023, the Tenant arranged for a mould inspection of the rental unit. The Tenant testified that the mould was identified in the unit and described experiencing adverse health impacts due to the prolonged moisture and mould exposure. No evidence was provided that remediation was completed.
6. On November 8, 2023, the Landlords completed a pre-purchase inspection. The report did not identify faucet leaks, moisture under the sink, or water damage in the kitchen. The report notes no evidence of water intrusion. The interior of each apartment was scanned for any evidence of water intrusion, and it was noted that the basement rear window seal is broken and in need of replacement. Evidence of prior and anticipated moisture are noted as slight.
7. In December 2023, the Landlords purchased the rental property and assumed the tenancy with Katherine Maclean.
8. On August 16, 2024, the Tenant sent an email to the Landlords raising several maintenance concerns, including ongoing water leakage, mould, and electrical issues. The Tenant testified that these issues had also been raised with the former owner and had not been addressed.
9. On August 21, 2024, the Landlord acknowledged the Tenant's email, and the maintenance issue raised. The Landlords wrote:

‘since we are now aware of the moisture build up is still an issue, for a more thorough assessment and potential fix of the moisture build up in the unit would require the entire unit fully vacant.’

10. The Landlords did not refer me to any evidence during this period that would explain why vacant possession was required to address the moisture issue.
11. On September 13, 2024, the Landlords sent a follow up email to the Tenant regarding the maintenance issues previously raised. The Tenant did not respond to this email.
12. The Landlords testified that they never conducted a routine inspection of the rental unit or investigated the maintenance issues raised by the Tenant and relied on the Tenant to report.
13. On September 15, 2025, the Tenant testified that she discovered a substantial leak under the kitchen sink.
14. On September 17, 2025, the Tenant reported the leak to the Landlords by email. The email makes reference to the leak, central pipe or faucet and the fact that the issue had been ongoing since she moved. The Tenant testified that she had previously addressed this issue herself by applying tape to the faucet as a temporary measure, but that the leak and water damage were now beyond anything she could reasonably fix herself.
15. The Landlords testified that they were already scheduled to attend at the unit for a different matter on September 17, 2025, not related to maintenance. The Landlords state that the Tenant reported the leak because they had planned to visit the property. When the Landlords attended the unit, they took photographs documenting water damage,

deterioration, and mould-like spotting inside the kitchen cabinetry, behind appliances, and in adjacent areas.

16. The Landlords filed extensive photographic evidence showing: a bucket collecting water under the sink, tape applied to the faucet and central pipe, deterioration and mould-like spotting on the cabinet walls and bases, water intrusion behind the refrigerator and between the tiles, electrical outlet deterioration and discoloration and a saturated carpet adjacent to the kitchen.
17. On September 18, 2025, the Landlords sent an email to the Tenant confirming the inspection findings and informing the Tenant that a plumber will attend for an assessment on September 18, 2025, at 12:00 p.m. and a contractor on September 20, 2025, at 10:00 a.m.
18. On September 18, 2025, a plumber attended the unit and performed an inspection. The plumber report states that there was a continuous leak traced to a broken faucet located in the kitchen. The faucet had sustained internal damage, leading to persistent water leakage under the sink over an extended period when the water supply was active.
19. The plumber further reports that the spout had a crack which had been addressed with a use of tape. No water was visible. Due to the prolonged nature of the leak, there was visible water damage to surrounding structure including cabinetry and wall surfaces. Mould buildup was observed in areas affected by consistent moisture exposure indicating long term water infiltration. The faucet was replaced at a cost of \$200.00.
20. On or about September 20, 2025, two contractors attended at the rental unit and completed an inspection. The Landlords referred me to an estimate from White Clean Corporation for \$5,550.00, which does not include materials. The Landlords indicated their preference to hire the second contractor, Avana Contractors Inc, who provided an estimate dated September 22, 2025, in the amount of \$10,170.00, which outlines labour and materials required to remediate the damage.

N5 Notice of Termination

21. On September 25, 2025, the Landlords served the Tenant an N5 notice of termination with a termination date of November 1, 2025. The notice alleges that the Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit.
22. The Landlord submits that the Tenant did not repair the damage, pay the Landlords the reasonable costs to repair the damage or make arrangements satisfactory to the Landlords within seven days after receiving the N5 notice of termination; therefore, the Tenant did not void the N5 notice of termination in accordance with section 62(3) of the *Residential Tenancies Act, 2006* (Act).
23. The Landlords submit that the Tenant is responsible for the damage of the rental unit on the basis that the leak under the kitchen sink went unreported for an extended period of time, resulting in prolonged water exposure, moisture buildup, and mould. The Landlords argue that the Tenant either caused or negligently contributed to the damage by continuing

to use the faucet despite signs of leakage and by applying tape as temporary measures rather than ensuring permanent repair.

24. The Tenant denies causing or negligently contributing to the damage. The Tenant testified that the leak had been ongoing since she moved into the rental unit and that she reportedly raised concerns about moisture, mould, and water leakage with the former Landlord and current Landlords. The Tenant further testified that she applied tape to the faucet as a temporary measure.
25. On September 29, 2025, the Landlords received a letter from TD insurance which notes the date of loss as September 16, 2025. The letter provides: 'we have determined that this loss was due to on-going water damage result to mould.' The insurance claim was denied.
26. The Landlords testified that they made repeated attempts to obtain the Tenant's agreement on the timing of the repair work and necessary accommodations. The Landlords stated that the Tenant's response required further clarification, and that no agreement was reached regarding remedial work. The issues had not been remediated as of the hearing date.
27. The Landlords referred me to several emails between September to November 2025, referencing proposed remedial work, requirement for the unit to be vacant, outlined scope of the work and proposed phased approach. The Tenant requested clarification, raised concerns regarding accommodation due to a physical disability, and expressed uncertainty about where she would reside and store her belongings during the repairs.
28. The Landlords testified that the contractors advised them that due to the water intrusion and mould the required restoration could not be carried out while the unit was occupied.
29. The Landlords were asked during cross examination whether they had served N13 Notice of Termination under s.50(1)(c) of the Act because the landlord requires possession of the rental unit in order to do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit. They indicated that they had not.
30. On October 3, 2025, the Landlords conducted a follow up inspection of the unit. Other than the faucet being replaced, no other remedial work had been completed.
31. On November 22, 2025, a further inspection was completed and no material changes in the condition of the unit were noted. The carpet was noted to be dry.

Disposition and reasons

32. The N5 Notice was served under s.62 of the Act which states:

62 (1) A landlord may give a tenant notice of termination of the tenancy if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex wilfully or negligently causes undue damage to the rental unit or the residential complex.

33. To be successful, the Landlord must prove, on a balance of probabilities, that the damage is “undue”. There is no definition of “undue” in the Act, but it is fair to say that it means “out of the ordinary” or “not wear and tear caused by ordinary usage”. The Landlord must also establish that the Tenant, an occupant or a guest either willfully or negligently caused the damage. If the Landlord establishes undue damage which was caused willfully or negligently then the Landlord must lead sufficient evidence to show what the reasonable cost of the repair is in order to be awarded compensation under s.89 of the Act.
34. The evidence establishes a connection between the water damage and plumbing issues that pre-dated the reported leak of September 17, 2025. The leak originated from an internally deteriorated faucet which worsened over time.
35. The question before me is whether the Landlords have established on the balance of probabilities that Tenant wilfully or negligently damaged the kitchen faucet resulting in the prolonged period of water leakage and moisture build-up.
36. There is no evidence that the Tenant intentionally damage the faucet or damaged the faucet through negligence, rather the faucet likely failed due to internal deterioration. This can be considered normal wear and tear caused by ordinary usage.
37. I have also considered whether the Tenant was negligent because they failed to take reasonable steps to alert the Landlords once they become aware of the problem. In this case, the Tenant acted reasonably by informing the Landlords about of the issues of moisture build up, water leakage, mould, and electrical issues on August 16, 2024. The Landlords did not promptly inspect the unit or take reasonable steps to address the problem as they were required to do under s.20 of the Act or to mitigate their damages as required by s.16 of the Act. The fact that the Tenant did not respond to the Landlords’ email did not prevent the Landlords from proceeding with the necessary work.
38. Therefore, the Landlords have not proven that the Tenant wilfully or negligently caused undue damage to the rental unit or residential complex. In addition, the Landlords have not proven the reasonable costs that the Landlords has incurred or will incur as a result of the damage.
39. If the Landlord believes that they require vacant possession of the rental unit in order to complete the necessary repairs, they may serve an N13 notice under s.50(1)(c) of the Act.

It is ordered that:

1. The application is dismissed.

January 27, 2026
Date Issued

Adeela Alvez
Member, Landlords and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.