



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Yuen v Duff-Bergeron, 2026 ONLTB 6845

Date: 2026-01-22

File Number: LTB-L-058258-25

In the matter of: Upper Unit, 382 MARGUERETTA ST
TORONTO ON M6H3S5

Between: Rick Yuen
Yean Fee Cho
Landlords

And

Alycia Duff-Bergeron
Tenant

Rick Yuen and Yean Fee Cho (the 'Landlords') applied for an order to terminate the tenancy and evict Alycia Duff-Bergeron (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;
- 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 claimed compensation for each day the Tenant remained in the unit after the termination date.

Rick Yuen and Yean Fee Cho (the 'Landlords') also applied for an order requiring Alycia Duff-Bergeron (the 'Tenant') to pay the Landlords' reasonable out-of-pocket costs the Landlords have 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 November 18, 2025.

The Landlord Rick Yuen, the Landlords' Legal Representative Joseph Behar, the Tenant and the Tenant's Legal Representative Samuel Mason attended the hearing.

All references to Landlord in the singular related to Rick Yuen.

Determinations:

Preliminary Issue: Is the second N5 valid

1. On July 4, 2025, the Landlords gave the Tenant an N5 notice of termination deemed served on the same date.
2. Pursuant to Section 68(1) of the *Residential Tenancies Act, 2006* (Act) a landlord may give the tenant a subsequent notice of termination if:
 - a) a notice of termination was given to the tenant under section 62, 64 or 67; and
 - b) more than seven days but less than six months after the notice mentioned in clause (a) was given to the tenant, an activity takes place, conduct occurs or a situation arises that constitutes grounds for a notice of termination under section 60, 61, 62, 64 or 67, other than an activity, conduct or a situation that is described in subsection 61 (1) and that involves an illegal act, trade, business or occupation described in clause 61 (2) (a).
3. On July 26, 2025 the Landlords gave the Tenant a second N5 notice of termination deemed served on July 31, 2025. However, the activities and conduct alleged in the second N5 notice of termination occurred between July 1 and 6, 2025.
4. Given that the alleged activities or conduct referred to in the second N5 notice of termination did not occur more than seven days after the first N5 notice was given to the Tenant the second N5 notice of termination is invalid.

Preliminary Issue: Can the Landlords proceed with their first N5

5. As indicated above the Landlords provided the Tenant with an N5 notice of termination on July 4, 2025. The first N5 notice of termination had a termination date of July 30, 2025.
6. Pursuant to Section 69(1) of the Act a landlord can apply to the Board for an order terminating a tenancy and evicting the tenant if the landlord has given notice to terminate the tenancy under the act or the *Tenant Protection Act, 1997*.
7. However pursuant to Section 69(2) of the Act an application under subsection (1) may not be made later than 30 days after the termination date specified in the notice.
8. The Landlord's application was filed on August 1, 2025 and is within 30 days of the termination date of the original N5 notice of termination.
9. The Landlord sought to amend the application to proceed on the original N5 notice of termination and the Tenant consented. As such the application will proceed based on the Landlords' first N5 notice of termination.

N5 Notice of Termination

10. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. However, the tenancy between the Landlords and the Tenant shall continue, if the Tenant meets the conditions set out below in this order.
11. The Tenant was in possession of the rental unit on the date the application was filed.
12. The Landlords' N5 notice of Termination alleges that on July 1, 2025 the Tenant wilfully or negligently damaged the residential premises as a result of a water leak that occurred due to an unattended portable washing machine.
13. The Landlords N5 notice also alleges that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant as follows:
 - a) On June 13, July 1 and 6, 2025 the Tenant had installed and was operating major appliances in the rental unit including a window-mounted air conditioning unit, a washing machine and a dishwasher without the Landlord's written consent. and
 - b) On June 23, 2025 the Tenant was improperly dressed in the shared backyard and had a disrespectful attitude toward a worker.

Substantial interference

Installation and operation of major appliances without consent

14. The Landlords allege that the Tenant has installed and is operating multiple major appliances in the rental unit including a window-mounted air conditioning unit, washing machine and dishwasher without the Landlords' written consent.
15. The Landlord Richard Yuen testified that lease agreement specifically states that the Tenant cannot install appliances without the permission of the Landlords and referred to the lease agreement which states:

The Tenant shall not operate any air conditioning unit without the consent of the landlord, which shall be given provided that the tenant agrees to reimburse the landlord for increased energy costs resulting from operation of said unit. The same agreement applies to the use of any additional refrigerator or freezer.
16. The lease agreement only refers to an air conditioner unit or any additional refrigerator or freezer. As such the Tenant was not required pursuant to the lease agreement to obtain permission for the operation of a dishwasher or washing machine as alleged by the Landlords.
17. The Landlord Richard Yuen confirmed that he was not a party to the original lease agreement as it was executed on July 16, 2017 between the Tenant and the former landlord. He testified that he purchased the residential complex in May of 2022 and that

since purchasing the residential complex no amendments to the lease have occurred and no new agreements were entered into between the Tenant and the Landlords.

18. The Tenant testified that the previous landlord was aware of the window air-conditioner unit and in fact it was present when she moved into the rental unit in September 2017, and that she had permission from the previous landlord to use the window air-conditioner unit.
19. The Tenant also produced a Google Street View image of the residential complex from October 2020 that shows the window air-conditioner unit.
20. The Landlord testified that he purchased the residential complex in May, 2022 and that he was not aware of any agreement between the Tenant and the previous Landlord regarding the use of the window air-conditioner unit.
21. Based on the evidence before me I am satisfied on a balance of probabilities that the Tenant and the previous Landlord had an agreement for the use of the window air-conditioner unit. The Tenant testified that the window air-conditioner unit was installed prior to her moving into the rental unit and that the previous landlord was aware of it. A Google Street View image shows the window air-conditioner unit installed in the rental unit in October 2020, two years prior to the current Landlord purchasing the property. Just because the Landlord was not aware of an agreement between the Tenant and the previous landlord regarding the use of the window air-conditioner unit does not mean one didn't exist. Pursuant to Section 18 of the Act covenants run with the land and would be binding on the new Landlord.
22. I find that the Tenant did not substantially interfere with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant with respect to the allegation of the Installation and operation of major appliances.

Tenant's improper attire and attitude

23. The Landlord stated that on June 23, 2025 he received a complaint from a worker who was delivering an item to the residential complex. The Landlord testified that the worker entered the shared common area backyard where the Tenant was observed to be partially clothed, which allegedly caused discomfort for the worker. The Landlord also claims that the Tenant was confrontational and disrespectful to the worker.
24. The worker did not attend the hearing to provide testimony with respect to the alleged event. The Landlords' evidence with respect to this event was entirely based on hearsay.
25. The Tenant disputes that the alleged incident on June 23, 2025 occurred at all.
26. While the *Statutory Powers Procedure Act, 1990*, permits administrative tribunals to allow hearsay evidence, in *Manikam v. Toronto Community Housing Corporation*, 2019 ONSC 2083, the Divisional Court found that tribunals must first assess whether the hearsay evidence is both necessary and reliable.
27. In the circumstances I do not need to make this assessment with respect to the hearsay evidence, as there is no allegation that this alleged conduct continued beyond this alleged

date. Therefore, the Tenant voided this allegation contained in the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

28. Based on the evidence before me I am not satisfied that the Landlords have proven on a balance of probabilities that the Tenant has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlords or another tenant;

Wilful or Negligent Damage

29. On July 4, 2025, the Landlords gave the Tenant an N5 notice of termination deemed served on the same date. The notice of termination alleges on July 1, 2025 the Tenant wilfully or negligently damaged the residential premises as a result of a water leak that occurred due to an unattended portable washing machine in the Tenant's unit.
30. It is not disputed that on July 1, 2025, a water leak occurred due to the use of the Tenant's portable washing machine.
31. The Tenant testified that she left the rental unit after she had started a load of laundry in her portable washing machine which was situated in the main space of the rental unit with the drain hose going to the bathroom sink. She further testified that she received a phone call from the tenant below her approximately 25 – 30 minutes after leaving the rental unit advising that water was leaking from the ceiling. She asked the tenant to go into her unit and turn off the washing machine, she then proceeded to return to the unit.
32. The Tenant submits that the incident was an accident as her robot vacuum was also operating in her rental unit at the same time and may have dislodged the drain hose from the portable washing machine.
33. In cross examination the Tenant also confirmed that she has cat in her rental unit and that the cat can roam freely throughout the unit.
34. The Landlords submitted a video taken by the downstairs tenant showing the water dripping from the ceiling into her rental unit. The video shows the water dripping from a seam in the drywall on the ceiling and appears to be limited to that area near a stairwell.
35. The Landlords submit that as a result of the water leak there was damage to the flooring of the rental unit, and the ceiling, walls and flooring of the units below.
36. The Landlord tendered an estimate for the repairs from a contractor Brian's Reno which is broken down as follows:
- a) First floor ceiling and drywall repair – localized removal of water damaged drywall, insulation and installation of new insulation drywall board, taping/sanding and repainting of full ceiling/wall section.
 - b) Basement suite drywall and wall repairs - localized removal of water damaged drywall, insulation and installation of new insulation drywall board, taping/sanding and repainting of full ceiling/wall section.

- c) Window and wall restoration – repair water damaged window frame and adjacent wall including removal of deteriorated material, sealant/caulking and repainting to finish.
 - d) Flooring repair/replacement – removal of affected flooring sections, subfloor, drying leveling where required, installation of replacement flooring and finishing.
 - e) Painting and finishing.
37. The Tenant submits that during her tenancy there had been issues of water leaks in the past, including a roof leak and a bathtub leak, that had occurred prior to the Landlords purchasing the residential complex which had resulted in pre-existing water damage to the drywall on the ceiling and walls of the units below. She provided an email exchange between herself and the previous landlord from July, 2020 regarding her bathtub leaking to the unit below.
38. Additionally, The Tenant submitted photographs of the residential complex from the real estate listing prior to the Landlords purchasing the rental unit. The photographs show visible pre-existing water damage to the ceiling and walls of the residential complex.
39. The Tenant further submits that it is impossible to differentiate what damage was pre-existing and what if any damage was caused due to the leak from the washing machine.
40. The Landlord stated that he does not recall any water damage to the residential complex at the time he purchased it, nor did the previous landlord advise him of any prior water issues.

Analysis

41. Subsection 62(1) of the *Act* provides:

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 willfully or negligently causes undue damage to the rental unit or the residential complex.

42. To succeed on this claim, the Landlord must establish the following:

- a) physical damage to the rental unit or the residential complex;
 - b) physical damage that is “undue”, meaning not normal wear and tear; and
 - c) physical damage that is willfully or negligently caused by the tenant, another occupant of the rental unit or a person whom the tenant permitted in the residential complex.
43. On an application before the Board the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case, that burden falls on the Landlords. For the reasons that follow, the Board finds that the Landlords have led sufficient evidence to establish that the Tenant negligently caused damage to the residential complex.

44. The portable washing machine was situated in the main living space of the rental unit while the drain hose ran from the unit to the Tenant's bathroom sink. At some point while the machine was in operation the hose became dislocated from the sink causing a leak to the residential complex. Although it is unclear how the hose became dislocated from the sink, by the Tenant's own admission she left the machine unattended. Additionally while away from the rental unit the Tenant's cat had free roam of the unit and a robot vacuum was also in operation and moving throughout the unit.
45. Upon review of the evidence and submissions, I am satisfied on a balance of probabilities that the leak from the portable washing machine was caused due to the negligence of the Tenant.
46. I am also satisfied on a balance of probabilities that as a result of the leak undue damage was caused to the flooring of the residential complex. The Landlord submitted a quotation that included a component for the repair and replacement of the floor. I heard no evidence with respect to any pre-existing damage to the floor of the residential complex or evidence to refute the amount alleged to repair or replace the damaged floor due to the leak.
47. I do however agree with the submissions of the Tenant when it comes to undue damage to the ceiling and walls of the units below the Tenant. There was clearly pre-existing water damage to the walls and ceilings of those units prior to the event of July 1, 2025. Based on the testimony and submissions I cannot differentiate between the pre-existing water damage and alleged new water damage to the drywall in the residential complex.

Compensation for damages

48. Subsection 89(1) of the *Act* says:

A landlord may apply to the Board for an order requiring a tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property, if the tenant, another occupant of the rental unit or a person whom the tenant permits in the residential complex willfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.

49. In order for an application for compensation for damages made pursuant to subsection 89(1) of the *Act* to succeed, a landlord must establish the following:
- a) there was property damage to the rental unit or residential complex;
 - b) the damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - c) the damage was a result of wilful or negligent conduct by the Tenants, occupants or guests.
50. In this context, I take the word "property" to refer to physical objects like the walls, ceilings, floors, appliances and fixtures in a residential complex.

51. If all of these factors are met, then the Board can award the Landlord the reasonable costs of repair or the replacement cost if it is not reasonable for the damage to be repaired.
52. As indicated above I cannot apportion what if any damage was caused to the ceiling and walls of the residential complex as a result of the incident on July 1, 2025, due to the evidence submitted of pre-existing water damage to the ceiling and walls of the rental units below the Tenant's.
53. The quotation submitted by the Landlords did contain a component related to the repair and replacement of the flooring in the residential complex estimated to be \$900.00 plus HST.
54. The Landlords will incur reasonable costs of \$1,017.00 (\$900.00 plus HST) to repair the damage to the flooring or replace the flooring that was damaged and cannot be repaired.

Relief from eviction

55. The Landlords sought termination of the tenancy due to the undue damages caused by the negligence of the Tenant.
56. The Tenant has resided in the rental unit since 2017 and sought an opportunity to maintain the tenancy.
57. 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 not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenant continues if the Tenant meets the conditions set out below.
2. The Tenant shall pay to the Landlords the sum of \$1,203.00 being the reasonable costs the Landlords will incur to repair the damage to the flooring or replace the flooring that was damaged and cannot be repaired and the costs of this application on or before February 28, 2026.
3. The Tenant shall not operate a portable washing machine in the rental unit unattended for a period of 12 months from the date of this order.
4. If the Tenant fails to comply with the conditions set out in paragraphs 2 or 3 of this order, the Landlords may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.

5. If the Tenant does not pay the Landlords the full amount owing on or before February 28, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2026 at 4.00% annually on the balance outstanding.

January 29, 2026

Date Issued

Sean Ramage

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.