



Order under Section 89 Residential Tenancies Act, 2006

Citation: Warder v Haig, 2026 ONLTB 10278

Date: 2026-02-05

File Number: LTB-L-067468-24

In the matter of: 60 FLORENCE ST
KINGSTON ON K7M1Y6

Between: Hilary Warder
Alison Warder
Landlords

And

Brian Haig
Venita Haig
Gertrude Talasan
Kim Talasan
Mitch Jill Talasan
Former Tenants

Hilary Warder and Alison Warder (the 'Landlords') applied for an order requiring Brian Haig, Venita Haig, Gertrude Talasan, Kim Talasan and Mitch Jill Talasan (the 'Former Tenants') to pay the Landlords' reasonable out-of-pocket costs that the Landlords 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 January 27, 2026.

The Landlord's Agent Walter Abicht, the Landlord's Legal Representative James Moak, the Former Tenants Gertrude Talasan, Venita Haig and Brian Haig and the Former Tenants' Legal Representative Jing Xue attended the hearing.

Determinations:

1. As explained below, the Landlords did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. I was satisfied that the Landlords served the Former Tenants with the application and Notice of Hearing at least 30 days before the hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.

3. These documents were served on December 19, 2025 by sending the documents to the Former Tenants' current residence. At the hearing, Ms. Xue confirmed she was representing all of the Former Tenants and that they were prepared to proceed.
4. The Former Tenants vacated the rental unit on September 30, 2023.
5. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

Compensation for damage

6. The Landlords' application alleges the Former Tenants negligently caused undue damage to the rental unit and the complex by failing to notify the Landlords that the property was infested with rats. The Landlords' position is that the Former Tenants had a positive duty to inform the Landlords of the rat infestation and that their failure to do so amounts to negligence that led to undue damage.
7. I agree with the Landlords position that silence in the face of clear knowledge of an issue that is causing damage to the rental unit can amount to negligent conduct leading to undue damage. However, in this case, I am not convinced the Landlords have proven on a balance of probabilities the Former Tenants had knowledge of the presence of rats in the unit before the damage occurred.
8. The rental unit is an entire home. There is a main floor and basement area. Only the Former Tenants occupied the property.
9. It was not disputed that a flood occurred in the rental unit in September 2023. The Landlords' Agent, Walter Abicht, believed this took place on September 7, 2023 while the Former Tenants asserted it was September 8, 2023. In any case, the precise date of the flood is not material to my analysis of the evidence.
10. Mr. Abicht attended the property to assess the damage caused by the flood. He testified that he discovered the source of the leak was the piping under the kitchen sink. His evidence was that rats had chewed through the water pipes and that there were clear signs of this damage under the sink including chew markings on the pipes and a significant amount of particle board missing from the area that originally surrounded these pipes.
11. The Landlords submitted photos taken by Mr. Abicht that show a completely empty under-sink cabinet. At the back of the cabinet is where the piping is located. The photos show what appears to be chew marks on the pipes and to the edges of the holes the pipes are fed through. However, the piping and the holes do not come close to the front of the cabinet. It is not likely the piping or the access holes would be in view to the Former Tenants when accessing the cabinet, particularly when the storage of household items within the cabinet would obstruct the view to the rear.
12. Mr. Abicht was continuously vague with when the submitted photos were actually taken. He gave no evidence the photos of a completely empty under sink cabinet were how he found the cabinet when he first inspected it. Without more, I am not convinced the Landlords have established the view of the cabinet depicted in the photos is close to representative of the view the Former Tenants' would have had in everyday use. As such,

their responses that they did not notice damager under the sink is entirely reasonable in my view. I am not satisfied the damage discovered under the sink by Mr. Abicht was obvious and clearly noticeable to the Former Tenants such that they had to know rats were present in the rental unit.

13. After discovering the source of the flood, Mr. Abicht returned to the property multiple times over the following three weeks before the Former Tenants vacated the unit on September 30, 2023. He testified that he observed rat dropping in the damaged ceiling, in the walls of the property, under stairways and on windowsills. He testified that he observed garbage bags chewed open and noted a cardboard box in the garage missing a large section. Another bag in the garage was found to have been chewed open at its base. The Landlord submitted photos depicting these observations but again, Mr. Abicht could only say they were taken some time between September 7, 2023 and September 30, 2023.
14. I had no confidence in Mr. Abicht's testimony as to when things were seen or photographed. He was reminded more than once to date his evidence but instead his testimony and photographs came across as an unreliable amalgamation of his observations and experiences at the rental unit over a three-week period after the flood occurred. Frankly, I found the passage of time had led to memory fade on the part of Mr. Abicht and I was not convinced he was able to accurately remember the chronology of events or when photos were taken. Even at times when he sounded sure of dates and chronology, it seemed to me his testimony was largely being supplemented with guesswork.
15. I found the dates of certain claims highly relevant to the Landlords' position. The Landlords must prove that before the flood took place on September 7, 2023, the Former Tenants had sufficient knowledge that rats were present in the unit such that they were obligated to report it to the Landlord. Showing they knew about rats after the Landlords discovered the issue during the flood investigation is not relevant since there is no need to notify the Landlords of an issue they are already aware of.
16. Therefore in my view, when a damaged cardboard box is first observed is highly relevant since its discovery on September 8, 2023 would tend to show knowledge of rats before the flood while its discovery on September 24, 2023 for example, is more likely to only show an ongoing presence of rats after September 7, 2023. The same analysis applies to a garbage bag that has been chewed open. If its first seen on September 8, 2023, the day after the flood, it may tend to show knowledge of rats before September 7, 2023. The same bag, discovered on September 27, 2023 is far less relevant, likely only showing an ongoing rat issue that the Landlords were already aware of.
17. Since I had no confidence in Mr. Abicht's testimony and since most of his observations were made of areas not typically in plain sight of the Former Tenants, I was not convinced the Landlords established the Former Tenants should have known rats were present in the unit.
18. Mr. Abicht also testified that after the water leak occurred on September 7, 2023, one of the Former Tenants told him that their SUV had been written off by their insurance company because rats had chewed through the wiring. The Former Tenant Venita Haig agreed that in 2022 she did have a new SUV that was written off because an animal had chewed the wiring. She believed it was a chipmunk that caused the damage and that the

areas accessed were too small for a rat to access. The vehicle was parked outside in the driveway.

19. I am not convinced this damage to the Former Tenant's SUV, occurring outside of the property in 2022, amounts to such obvious evidence of rat infestation in 2023 that the Former Tenants failed to report to the Landlords.
20. The Former Tenant Gertrude Talasan testified that she lived in the basement area of the property and while she saw mouse traps upon moving in, she never saw rats in the property or saw rat feces. She testified she did not notice any damage under the sink. Ms. Talasan stated the ceiling had leaked in the past and that the Landlords were notified of this.
21. The Former Tenant Ms. Haig testified that Mr. Abicht advised them they he believes there is an issue with rats and the property but that she did not believe this was correct since she had not seen any. It was at this time she had mentioned the issue with her SUV the year earlier.
22. Ms. Haig's testimony that she would have reported the presence of a rat immediately to the Landlords. It was obvious from Ms. Haig's demeanor and testimony that the thought of living amongst rats was a disgusting notion. She also noted that rats are dangerous and stated there was no possible reason to stay silent and "side with the rats" while staying silent about the issue. Her testimony was that had she seen even one rat she would have left the property.
23. I found Ms. Haig's testimony very passionate, convincing and logical. I do not find it is at all likely that a reasonable person, including these Former Tenants, would knowingly live amongst rats and stay silent about it. There is no possible benefit in doing so and I cannot conclude the Former Tenants had clear and obvious evidence they were living with rats in the property and despite no downside in speaking up, chose to silence instead.
24. Mr. Abicht himself stated that in all his visits to the rental unit in the three weeks between the flood and the Former Tenants' vacating the unit, he never saw a live rat. His testimony was rats are nocturnal and will not come around in the presence of activity. I find it is most likely the Former Tenants had the experience as Mr. Abicht. They saw no rats either.
25. For all of these reasons, I do not find the Landlords have established on a balance of probabilities that the Former Tenants were clearly aware of the presence of rats in their home and that instead of reporting the issue to the Landlords, chose to stay silent.
26. In addition, I find the Landlord most likely were aware or should have been aware of a rat issue at the property as early as February 3, 2023. I say this because the Landlords' own evidence shows that on this date they were at Peavey Mart purchasing a rat trap and two rat glue pads for the property. The Landlords submitted this receipt as part of their invoices supporting their claim for compensation for damage.
27. While Mr. Abicht testified these items were only purchased as a precaution because mice activity was discovered in the furnace room, I found this explanation underwhelming and not at all convincing. The Peavey Mart purchases were not all-purpose pest and rodent solutions. While two items were specifically for mice, two purchases were specifically for rats. I am not convinced a reasonable person spends money on a possible solution to a

problem they do not believe they have. Put another way, Mr. Abicht was not buying raccoon traps or skunk repellent. He was buying rat traps and rat glue strips. I find this shows it is most likely the Landlords were aware of a rat issue, or the real potential for one on February 3, 2023, 7 months before the leak occurred and the presence of rats was verified.

28. Mr. Abicht gave no evidence that after these rat traps and rat glue strips were purchased on February 3, 2023, he or anyone attended the property in the following months before the leak occurred, to inspect for the presence of rats to determine if further action was needed. In my view, the Landlords were aware or certainly should have been aware, based on their own purchase of rat killing items, that an issue with rats was occurring or likely to develop. I do not find the Landlords' failure to monitor or inspect the property in the time before the leak amounts to negligence on the part of the Former Tenants.
29. For all of the reasons stated here, I do not find the Landlords have established on a balance of probabilities that the Former Tenants wilfully or negligently caused undue damage to the rental unit or the residential complex. As such, the Landlords' application is dismissed.

It is ordered that:

1. The Landlords' application is dismissed.

February 5, 2026

Date Issued

John Cashmore

Member, Landlord and Tenant Board

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