



Order under Section 89 Residential Tenancies Act, 2006

File Number: LTB-L-019375-25

In the matter of: F, 92 HOLLAND AVE
OTTAWA ON K1Y0X6

Between: Forbes Property Management Landlord

And

Nenad Mihelcic Former Tenant

Forbes Property Management (the 'Landlord') applied for an order requiring Nenad Mihelcic (the 'Former Tenant') 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 Tenant, another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

This application was heard by videoconference on November 6, 2025.

The Landlords, Gregory Hoover, Valerie Balderson, the Former Tenant and the Tenant's representative, Cheryl Moore attended the hearing.

Determinations:

1. As explained below, the Landlord did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
3. I am satisfied that the Landlord served the Former Tenant with the application and Notice of 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.
4. The Former Tenant vacated the rental unit on April 27, 2024.
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. In the application, the Landlord seeks compensation for damage to the concrete countertops in the rental unit. The Landlord testified that during an inspection following the Former Tenant's vacating of the unit, the countertops showed discoloration, including red, brown, and orange staining, as well as cloudy white patches that were not present at the start of the tenancy. The Landlord testified that at the beginning of the tenancy the countertops were in good condition with no concerns regarding staining or damage.
7. The Landlord testified that the staining could not be removed through routine cleaning and the countertop has to be refinished. The Landlord submitted photographs taken by a professional cleaner and during post-tenancy inspections. The Landlord provided to the Board before and after photographs, showing the condition of the countertops following the Former Tenant's occupancy. The Landlord also submitted contractor estimates indicating that the damage penetrated the surface of the concrete and required recoating or refinishing rather than simple cleaning.
8. The Landlord testified that they were unsure of the cause of the damage but believed it was inconsistent with normal wear and tear. The Landlord submitted that the damage could not be explained by ordinary use and required professional remediation.
9. The Tenant denies causing any damage to the countertops. The Tenant testified that the staining was the result of water quality issues, including iron content and acidity, and not misuse or negligence. The Tenant testified that he regularly cleaned the countertops and did not observe damage beyond staining he attributed to water conditions rather than their own conduct. The Tenant did not submit any documentary evidence to support their position.

Analysis

10. Section 34 of the Act states that the tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant.
11. Therefore, to be entitled to compensation for damages the Landlord in this application must prove that the Former Tenant wilfully or negligently caused the undue damage.
12. The burden is on the Landlord to establish that the Former Tenant wilfully or negligently caused damage to the rental unit. Based on the evidence of both parties, I am not satisfied, on a balance of probabilities, that the Former Tenant caused damage to the concrete countertops.
13. The Landlord testified that they did not know the cause of the staining to the countertops, or how the damage occurred or attribute it to any specific act or omission by the Former Tenant, but only that the staining was not present at the start of the tenancy and was observed following the Former Tenant's vacating of the unit.

14. The Landlord suggested that the staining may have been caused by the Former Tenant's misuse or improper cleaning practices. However, no evidence was submitted to establish that the staining shown in the photographs was caused by wilful or negligent tenant conduct rather than other factors. There was no evidence demonstrating that ordinary use, routine cleaning, or alleged lack of cleanliness would cause permanent penetration or deterioration of concrete countertops.
15. The Former Tenant testified that the staining was attributable to water quality issues, including iron content and acidity, rather than misuse or negligence. The Tenant testified that the countertops were regularly cleaned and that the staining developed despite ordinary use and maintenance. Although there is nothing before to substantiate the Former Tenant's claim of the iron content within the water, there was no evidence of any specific act or omission by the Former Tenant that would amount to wilful or negligent conduct causing undue damage to the countertops.
16. Even if I were to accept that the countertops were in better condition at the commencement of the tenancy, the Landlords did not provide any evidence that the Former Tenant's wilful or negligent conduct caused undue damage to the countertop. As the Landlord bears the onus of proving all elements of the application, including how the Former Tenant wilfully or negligently caused the alleged damage, I find that the Landlord has not met their burden of proof.
17. Given all of the evidence before me, I find that the evidence is insufficient to establish that the Tenant, an occupant, or a guest wilfully or negligently damaged the concrete countertops. As a result, the Landlords' application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

February 3, 2026
Date Issued

Joshua Labbe
Member, Landlord 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.