



**Order under Section 69 / 88.1 / 88.2 / 89
Residential Tenancies Act, 2006**

Citation: Merchant v Pereira, 2026 ONLTB 13721

Date: 2026-02-12

File Number: LTB-L-097987-25

In the matter of: MAIN UPPER FLR, 1 PEWTER GATE
BRAMPTON ON L6X0L4

Between: Sayed Ahmed Merchant Landlords
Salma Sayed Merchant

And

Lauren Pereira Tenant

Sayed Ahmed Merchant and Salma Sayed Merchant (the 'Landlords') applied for an order to terminate the tenancy and evict Lauren Pereira (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 and 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.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' 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.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlords' reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on January 8, 2026.

The Landlords, the Tenant and the Tenant's representative, Kush Gupta, attended the hearing.

Determinations:*Preliminary Issues**Adjournment request*

1. At the outset, the Tenant's representative requested an adjournment because a family member had been released from hospital into his care the day before resulting in lack of sleep and opportunity to prepare for today's hearing.
2. The Landlords opposed the adjournment request, stating that they had medical issues but were still prepared for the hearing, that the matter had been ongoing for over eighteen months and that the Tenant had a pattern of adjournment requests.
3. I exercised my discretion to deny the request to adjourn the hearing. The Tenant's representative has had over a year to prepare with the Tenant and organize her evidence for the hearing and all parties were in attendance at the hearing. I offered to stand the matter down until the afternoon to provide the Tenant's representative some extra time to sleep and prepare with the Tenant. That offer was declined.

N5 notice does not correctly identify the rental unit

4. The Tenant's representative submitted that the application should be dismissed because the N5 notice was defective in that it identified the unit as "*Main Upper Floor*" when, in fact, the Tenant rented the entire home. He produced a copy of the tenancy agreement [Doc 7039968] which identifies the rental unit as 1 Pewter Gate, Brampton, Ontario, L6X 0L4.
5. The Landlords position is that the basement was never included in the unit. They stated that while there is no reference on the tenancy agreement that the basement is excluded, the lease confirms that:
 - the Tenant is responsible for 75% of utilities
 - the Tenant has access to one parking space in the garage and one parking space on the driveway, on the same side of the garage they park on.
6. The Landlords produced the following documents to corroborate their position that the rental unit was not included as part of the rental unit:
 - tenancy agreement dated July 26, 2023 confirming other tenants were renting the basement of the residential property [Doc 7039920, pages 40 to 53]
 - agreement to lease dated July 5, 2019 confirming the basement was rented to a previous tenant [Doc 7039920, pages 62 to 71]
 - Order LTB-L-047884-25 issued on October 14, 2025 wherein the Board already determined that the basement was not, in fact, included in the Tenant's unit [Doc 7039920, pages 106 to 112]
7. While order LTB-L-047884-25 states that "*this finding is not intended to bind the discretion of a different adjudicator...*", there is no evidence before me which persuades me that the

previous finding was incorrect. As such, I find that the Landlord's N2 notice complied with the requirement of the Act by including the unit identifier as "*Main Upper Floor*".

N5 notice lacks sufficient details

8. The Tenant's representative submitted that the application should be dismissed because the N5 notice does not provide sufficient details for the Tenant to respond because it did not set out specific dates.

9. The N5 notice reads as follows:

March 2025: 1) You are required to return possession of the basement and one side of parking in garage and driveway
2) You are required to remove storage items from your side of the garage as the garages is not to be used for storage

July 2025: 3) You have not informed the Landlord regarding any flammable oxygent (*sic*) tank in the property. You are responsible for cleaning the area that the oxygen tank has caused mold. No smoking

July 2025: You are required to allow the Landlord and or his authorized agent to enter the rental premises with proper 24-hour notice. You may not prevent the Landlord from entering.

10. I am not persuaded that the N5 notice lacked sufficient details for the Tenant to understand what she had to respond to. In my view, it is evident that the Landlords are alleging that in March 2025, the Tenant was found to be using the basement, additional garage/driveway space and storing items in the garage. Unless the Landlords were inspecting the residential property every day, they would not have known the exact date in March that behaviour began.
11. With respect to the July 2025 incidents, while there are no specific dates set out in July, I find there are sufficient details for the Tenant to ascertain that the Landlords allege that an oxygen tank in the unit posed a safety risk (i.e. flammable), that it had caused mold in the unit and that the Tenant had refused access to the unit to the Landlord.
12. As such, I find the N5 notice provides sufficient details of the Landlords' allegations for her to respond.

N5 notice is not the correct termination notice

13. The Tenant's representative submitted that the application should be dismissed because the Landlords' N5 notice claims rent arrears under Reason 2 (i.e. wilful or negligent damage). He submitted that rent arrears must be set out on an N4 notice of termination, not an N5.
14. The schedule attached to the N5 notice claims wilful damage for the following categories:
- Basement rent
 - Unpaid utilities
 - Inspection fees

- Mold
- Garage storage removal

15. While I agreed that rent arrears, as well as unpaid utilities, were incorrectly included under Reason 2 (i.e. wilful or negligent damage), I do not find that doing so renders the N5 notice defective. The Tenant's representative did not direct me to any legislation or caselaw in this regard.

Landlord's calculations are wrong

16. The Tenant's representative submitted that the application should be dismissed because the Landlord's calculations in the schedule attached to the N5 notice were misleading. He stated that the grand total on the schedule is \$20,520.94, yet the Landlord was only claiming \$19,220.94.
17. I find there is no merit to the submission of the Tenant's representative. A party has the discretion to choose how much they want the Board to order a party to pay.

The Application

18. As explained 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.
19. The Tenant was in possession of the rental unit on the date the application was filed.

Substantial Interference

20. On November 11, 2025, the Landlords gave the Tenant an N5 notice of termination, deemed served on November 12, 2025. The notice of termination alleged that the Tenants behaviour had:
- i) substantially interfered with another tenant's and the Landlords reasonable enjoyment of the residential complex by using the basement and additional parking in the garage and driveway without authorization, storing items in the garage, using an oxygen tank in the property posing a safety risk and causing mold and denying access to the rental unit after property notice of entry had been served;
 - ii) caused damage to the unit in the amount of \$19,220.94

Refusal of entry

21. The Landlords allege that the Tenant refused to allow the Landlords and/or their contractor or agent access to the unit to inspect for damage on July 19, 25, 29, November 27, 2024, April 7, July 22 and 23, 2025. They stated that as of the date of the hearing, the Tenant has still refused entry into the unit.
22. The Landlords admitted that after they served N5 notice on November 12, 2025, they did not deliver any more 24-hour notice of entry nor have they attempted to gain access to the unit.

As such, there is no evidence before me that the Tenant did not void this portion of the N5 notice. In other words, there is no evidence before me that the Tenant refused access to the rental unit after the N5 notice was served.

Unauthorized use of basement

23. The Landlords stated that at a previous hearing, the Tenant admitted that she had been using the basement since February 2025, which use is not included in her lease. Order LTB-L-047884-25 [Doc 7039920, page 34, paragraph 34] confirms that the Tenant admitted that she started occupying the basement in May 2025.
24. The Tenant stated that she has stopped using the basement.
25. Given that The Landlords admitted that after they served N5 notice on November 12, 2025, they have not been inside the unit, there is no evidence before me to challenge the Tenant's evidence that she has voided this portion of the N5 notice by ceasing to use the basement this portion of the N5 notice.

Inappropriate parking in the garage

26. The Landlords stated that there is a two-car garage in the residential property. The Tenant was allocated one side to park, while the basement tenant was allotted the other side. The Landlords stated that the Tenant was storing items on her side of the garage which resulted in her having to encroach onto the basement tenant's parking area. By continually parking too far over in the garage, the Tenant was denying the basement tenant the ability to park their car inside the garage.
27. The Tenant denied that she was storing items in the garage and that she was not parking inappropriately in the garage.
28. Given that the Landlords admitted that after they served N5 notice on November 12, 2025, they have not been inside the garage, there is no evidence before me to challenge the Tenant's evidence that she has voided this portion of the N5 notice by ceasing to store items in the garage and parking inappropriately in the garage.

Oxygen tank

29. The Landlords stated that their agent advised them on July 23, 2025, they observed a notice in the window of the unit indicating that an oxygen tank was in use. The Landlords said that the Tenant never informed them that an oxygen tank was being used in the unit and that he expected his insurance costs to increase given the safety concerns regarding the oxygen tank (i.e. was flammable and therefore posed a safety threat). The Landlord admitted that he had not contacted his insurance to find out if the use of oxygen in the unit would increase his premium.
30. The Tenant stated that her mother required oxygen on an intermittent basis for health reasons and that oxygen tank did not pose a safety risk in the unit, especially since no one smokes in the unit. The Landlords did not produce any documentary evidence, such as photographs, or witnesses to refute the Tenant's testimony that no one smokes in the unit.

31. The Landlords' N5 notice confirms that that he was aware that there was an oxygen tank in use in the unit because the Tenant had posted a notice in the window of the unit indicating same. As such, no action was necessitated by the Tenant after receiving the N5 with respect to informing the Landlords that there was an oxygen tank in use in the unit. They already knew.
32. Based on the evidence before me, I am satisfied that the Tenant stopped the conduct or activity set out in the N5 notice within seven days after receiving the N5 notice of termination. Therefore, I find that the Tenant voided the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).

Willful or Negligent Damage

33. The Landlords claim that the Tenant willfully or negligently caused damage to the unit by:
 - causing surface mold buildup on the main floor due to temperature change from use of an oxygen tank in the unit
 - allowing surface mold to grow in the shower due to lack of maintenance
 - refusing the Landlords and their contactors access to the unit to address maintenance
34. The Landlords had no documentary evidence or witnesses to corroborate their testimony that using an oxygen tank in the unit caused mold. When asked what this allegation was based on, the Landlords replied "*Well, you can Google it*".
35. The Landlords did not produce any evidence, oral or documentary, regarding surface mold in the shower or damage caused by maintenance issues that were not addressed.
36. There is no evidence whatsoever before me that the Tenant has damaged the unit. As such, I find that the Landlords have not proven 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 or residential complex.

Unpaid utilities

37. It is undisputed that the tenancy agreement confirms that the Tenant is responsible for paying 75% of utilities (i.e. gas, water, electricity), as well as 75% of the hot water tank rental.
38. The Landlords claim that because order LTB-L-047884-25 stated that the Tenant confirmed that she started occupying the basement in May 2025, she should reimburse the Landlords for the remaining 25% of all utility bills as well as the remaining 25% of the hot water tank rental
39. With respect to utilities, the Landlords have not proven that they suffered any actual out of pocket expense because of the Tenant's use of the basement for a period of time. There is no evidence before me as that the Tenant's use of the basement caused an increase in consumption and the cost of utilities. The basement would have been heated regardless. There is nothing before me (such as a comparison of utility consumption) for me to determine that the cost of utilities increased. The Landlords did not produce any evidence that the Tenant agreed to more for utilities than the 75% set out in the lease.

40. Given that the Landlords confirmed that the Tenant has paid her 75% share of the utility bills, I find that the Landlords have not proven that the Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement.

Hot water tank rental

41. While the tenancy agreement indicates that the Tenant is responsible for paying hot water tank rental charges, I am not satisfied that hot water tank rental charges can be claimed as an unpaid utility. This is because Section 2 of the Act defines utilities as heat, electricity and water.
42. In this case, the Landlords did not serve an N5 notice alleging that a Tenant's failure to pay hot water tank charges substantially interfered with their use and enjoyment of the rental unit or their lawful rights, privileges and interests. The hot water tank rental charges are not claimed in the application as an out-of-pocket expense they incurred as a result of that substantial interference. As such, the claim for hot water tank rental fees is denied.

Compensation for substantial interference

43. The Landlords claim compensation for substantial interference pursuant to section 88.1(1) of the Act, namely \$16,650.00 in rent for the Tenant's use of the basement.
44. Section 88.1(4) of the Act provides:
- (4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of an interference described in clause (1) (a) and do not include costs that the landlord may recover in an application under section 88.2 or 89. [Emphasis added]
45. Unpaid rent is not an "out-of-pocket expense" and is not, as a result, recoverable from the Tenant under section 88.1.
46. Accordingly, I do not find that the Landlord proved that they incurred a reasonable out-of-pocket expense as contemplated by section 88.1(4).

It is ordered that:

1. The Landlords' application is dismissed.

February 12, 2026
Date Issued

Karen Gonçalves
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.