



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Kitchener Housing Inc. v Keny, 2026 ONLTB 28755

Date: 2026-04-08

File Number: LTB-L-097193-25

In the matter of: 22, 355 CHARLES ST E
KITCHENER ON N2G2P8

Between: Kitchener Housing Inc. Landlord

And

Wilma Keny Tenant

Kitchener Housing Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Wilma Keny (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 Landlord 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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Kitchener Housing Inc. (the 'Landlord') applied for an order requiring Wilma Keny (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord 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 February 26, 2026.

The Landlord's Legal Representative Peter Schroeder, the Tenant's Legal Representative Joel Yinger and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord 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 Tenant was in possession of the rental unit on the date the application was filed.
3. N5 Notice of Termination – Wilful or Negligent Damage

On September 17, 2025, the Landlord gave the Tenant an N5 notice of termination, which was deemed served on September 17, 2025. The notice of termination contains the following allegations:

- On July 22, 2025, the Landlord inspected the rental unit and documented the following issues, food garbage and fecal matter on floors and walls throughout the unit, piles of clutter in some areas, beds without mattresses, several large holes in the walls, living room ceiling sagging and cracked from alleged water damage, kitchen cabinets from unreported water damage, kitchen sink drain disconnected, light fixtures and smoke alarms missing, exposed wires hanging. Flooring throughout unit extremely poor conditions, bathroom subfloor appears from unreported water damage, bathroom fan not functional, mold on caulking bathtub.
- On August 7, 2025, issues were discovered in the basement, significant unreported water damage, food and garbage, feces, and other filth on floors and walls, large holes in walls and clutter about.

The Landlord's Evidence

4. The Landlord's first witness was contract/inspector Chris Byrne. He testified that the rental unit was inspected in July and September 2025. He inspected the rental unit on or about July 22, 2025. He observed water damage in the ceiling area beneath the bathroom.
5. He stated there was visible staining across a large portion of the ceiling. He had some concerns regarding possible mould and structural damage. When he inspected the flooring in the bathroom, he described it as "spongy".
6. Mr. Byrne stated that light fixtures and electrical components were damaged or missing. Describing the overall condition of the rental unit required extensive remediation. He provided a repair cost of approximately \$18,000.00, which he described as a worst-case scenario projected cost. The quote was provided on or about July 28, 2025.
7. Mr. Yinger cross-examined the witness on the evidence presented.
8. During cross examination, Mr. Byrne acknowledged that no invasive or destructive testing was performed. No mould testing or laboratory analysis was conducted, adding there was no definitive evidence of mould was confirmed.

9. When questioned about the \$18,000.00 estimate, Mr. Bryne admitted this amount was speculative and precautionary. He stated that some of his observations were based on assumptions rather than verified findings. Additionally, he admitted there was no direct evidence that linked all damage to the Tenants negligence.
10. The witness also conceded that certain areas (such as flooring) were not supported by photographic evidence. There was no confirmed evidence of ongoing damage at the time of the hearing.
11. The Landlord's next witness was Tony Troscke. He testified that the Tenant failed to maintain the rental unit properly. He entered the rental unit towards the end of February 2026.
12. He testified there was extensive wall damage throughout the rental unit, and what he states appears to be feces smeared on some wall areas. He claims that all doors have been damaged feces smeared on them.
13. He stated that the Tenant has removed the main floor baseboards to facilitate her renovating the unit. When he went into the kitchen, he observed cabinet doors missing, range exhaust was damaged along with the stove.
14. Mr. Troscke stated that the mailing leading to the basement had been removed. The thermostat is missing, and the doorbell was damaged. The CO2/smoke detector have been removed from the ceiling and hanging from wires.
15. He believes that the bathroom not been cleaned in sometimes and the closet doors in the bedroom were damaged and removed.
16. Mr. Yinger cross-examined the witness on the evidence presented.
17. Under cross examination, Mr. Troscke acknowledged that:
 - Delays in responding to maintenance issues.
 - The Landlord did not immediately address reported leaks.
 - Smoke detectors were removed during pest control and not reinstalled by the Landlord.
 - There was no current evidence of ongoing safety hazards.
 - Some claimed damages were not clearly documented.

The Tenant's evidence

18. The Tenant Ms. Keny testified. She stated that she has reside in the rental unit for approximately 15 years. She is the sole caregiver of four children. Two of her children are non-verbal and autistic.

19. Regarding the water damage incident. The Tenant testified that a toilet overflow occurred due to a child placing a toy in the toilet. She hired a plumber and contractor at her own expense, it was not intentionally caused or permitted damage.
20. She resolved this issue promptly and repairs were completed, including drywall restoration and painting.
21. The Kitchen Leak. The Tenant testified that a leak was reported to the Landlord, and they did not act immediately. She restricted the use of the sink to prevent further damage. She claims that any resulting damage may have pre-existed or been aggravated by the Landlord's delay.
22. Ms. Keny stated that she completed repairs including drywall replacement, painting, baseboards, and fixtures. She stated the rental unit has been restored and improved significantly. During the contractors works, it was reported to her no mould was found.
23. The Landlord's Legal Representative Mr. Schroder cross-examined the Tenant on the evidence presented.
24. During cross-examination, the Tenant admitted:
 - The unit was cluttered at one point.
 - Damage occurred in the unit.
 - She does not possess formal documentation for all contractors.
 - Some repairs were made prior to landlord authorization.
25. Ms. Keny denied acting negligently, ignoring or reducing to address damage, and that she caused intentional damage.
26. While Macy McLean testified on behalf of the Landlord, the Board did not rely on her evidence, as it was elicited through improper leading questions posed by the Landlord's legal representative, Mr. Schroeder. Leading a witness in this manner undermines the integrity of the evidence by risking coaching and distorting the witness's independent recollection. In the absence of properly elicited testimony, I was unable to meaningfully assess credibility or reliability, and the evidence is therefore afforded no weight.

Analysis

27. The central legal issue is whether the Landlord has established, on a balance of probabilities, that the Tenant caused damage to the rental unit and that such damage was caused wilfully or negligently, as required under the Act. The burden of proof rests entirely with the Landlord. This burden cannot be satisfied by suspicion, possibility, conjecture, or speculative inference.

28. In assessing the evidence, the Board considers the internal consistency of testimony, its consistency with other evidence, the plausibility of the account, and whether the evidence is corroborated.
29. The Tenant's evidence was consistent throughout both direct and cross-examination. It was supported by her conduct, including timely repairs and mitigation efforts, and was plausible in light of the circumstances, including a long-term tenancy, the presence of children, and disability-related considerations. The Tenant's evidence was not materially contradicted by any independent evidence.
30. By contrast, the Landlord's evidence was partly speculative and relied largely on visual impressions rather than objective testing. It lacked corroboration from independent experts and depended heavily on assumptions regarding causation. Where evidence is speculative or assumption-based, its probative value is significantly diminished. As a result, greater weight is given to direct, first-hand evidence than to conjecture.
31. Causation is a critical element of the Landlord's case. I find that causation has not been established. There is no direct evidence linking the Tenant's conduct to the alleged structural or water damage. No expert evidence—such as plumbing, engineering, or environmental assessments—was provided. The Landlord's conclusions are inferential rather than evidentiary, and alternative explanations, including wear and tear, aging infrastructure, or latent defects, were not meaningfully excluded. In the absence of reliable evidence of causation, responsibility cannot be attributed to the Tenant.
32. To establish negligence, the Landlord must demonstrate the existence of a duty of care, a breach of the applicable standard of care, foreseeability of harm, and a causal link between the alleged breach and the damage. While tenants owe a duty to avoid undue damage, not every incident resulting in damage constitutes negligence.
33. In this case, the evidence indicates that the toilet overflow resulted from a child placing an object into the toilet. The child's conduct was not shown to be intentional or foreseeable in a manner that would create legal fault, nor is there evidence that the Tenant failed to exercise reasonable supervision under the circumstances.
34. I turn to section 34 of the *Residential Tenancies Act*, 2006, a tenant is only responsible for damage caused by wilful or negligent conduct, and the mere occurrence of damage is not sufficient to establish liability. The law recognizes that accidental damage, particularly where it arises from the ordinary and age-appropriate behaviour of children, does not automatically amount to negligence. In this case, the Landlord has not provided evidence demonstrating that the Tenant failed to meet the required standard of care or that the damage resulted from negligent conduct. As such, the statutory threshold under the 'Act' has not been met, and no breach of the standard of care has been established.
35. The Act distinguishes between undue damage, which may justify termination, and ordinary wear and tear or accidental damage, which does not. The evidence establishes that the

events in question were isolated incidents, there was no pattern of deliberate or reckless conduct, and the Tenant responded by taking remedial action. I find that the damage described, if any, is more consistent with accidental or incidental damage rather than “undue damage” within the meaning of the Act.

36. The Landlord’s case is significantly weakened by the absence of objective evidence. No mould testing was conducted, no structural engineer assessed the alleged subfloor damage, no plumbing report confirmed the source of leaks, and no independent expert quantified the extent or cause of the alleged damage. Where claims involve structural damage, moisture intrusion, or mould concerns, expert evidence is often necessary to establish causation, extent, and responsibility. In this case, the reliance on subjective observation is insufficient to meet the evidentiary threshold.
37. The Tenant’s conduct weighs strongly against a finding of liability. The evidence demonstrates that the Tenant reported issues when they arose, took steps to mitigate further damage, retained professionals to address repairs, and incurred personal financial cost to remedy the situation. This conduct is consistent with good faith, responsible tenancy, and compliance with obligations under the Act. The law recognizes that a tenant who takes reasonable steps to mitigate damage cannot be characterized as negligent.
38. The Landlord also raised concerns regarding clutter and the general condition of the unit. The Board finds that clutter, in itself, does not constitute damage under the Act. There is no evidence that the clutter caused structural harm or posed safety risks, and no by-law or statutory violation was established. Without evidence of substantial interference with reasonable enjoyment or physical damage attributable to clutter, this allegation cannot support termination.
39. When the evidence is considered as a whole, the Landlord has failed to meet its burden of proof. The deficiencies include a lack of direct evidence of causation, the absence of expert or technical evidence, reliance on speculation and estimates, failure to exclude alternative explanations, and insufficient proof of negligence. The Board cannot make findings based on speculation or fill evidentiary gaps, as doing so would constitute an error of law.
40. The ‘Act’ must be applied in a manner that protects tenants from unjust eviction and treats eviction as a remedy of last resort, requiring clear and convincing evidence. The Act is not intended to penalize tenants for isolated incidents, replace landlord insurance, or impose strict liability for all damage. Instead, it requires proof of fault, tenant responsibility, and a causal link between the damage and wilful or negligent conduct. These requirements have not been met in this case.
41. On a balance of probabilities, I find that the Landlord has not proven either causation or negligence. Much of the Landlord’s evidence is speculative and unsupported, while the Tenant’s actions were reasonable and carried out in good faith. There is no persuasive evidence that the Tenant acted carelessly or failed to take appropriate steps to prevent the

alleged damage. As the Landlord has failed to meet the required burden of proof, the statutory requirements for termination under the Act have not been satisfied. The application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

April 8, 2026
Date Issued

Anthony Bruno
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.