Order under Section 69 / 89
Residential Tenancies Act, 2006

Citation: MERKUR PROPERTIES v Mailvaganam, 2026 ONLTB 35547
Date: 2026-05-04
File Number: LTB-L-041492-24

In the matter of: 602, 2225 EGLINTON AVE E
TORONTO ON M1K2M7

Between: MERKUR PROPERTIES — Landlord

And

Sathiyabhama Mailvaganam
Sothinathan Vadivelu — Tenants

MERKUR PROPERTIES (the 'Landlord') applied for an order to terminate the tenancy and evict Sathiyabhama Mailvaganam and Sothinathan Vadivelu (the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises;
- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex;
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

The Landlord also applied for an order requiring the Tenants 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 Tenants, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on December 4, 2025.

The Landlord’s agent Burnett Adams (‘BA’), the Landlord’s Legal Representative Geoff Paine, the Tenant Sathivabhama Malivaganam (the ‘Tenant’) and the Tenants’ Legal Representative Seema Habib attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for the claim for compensation in the application. Therefore, the Tenants must pay to the Landlord $2,711.70.
2. The Tenants was in possession of the rental unit on the date the application was filed.
3. The Tenants vacated the rental unit on January 1, 2025. As such, the Landlord opted to only proceed with the s. 89 claim for wilful or negligent damage.
4. BA testified that on February 28, 2024, the Tenants’ son damaged a fire alarm stopper. Entered into evidence was an invoice from Trace Electric dates March 4, 2024, with respect to the work that was done on February 29, 2024, to replace the stopper. The cost for same was $445.50.
5. BA testified that on the date in question, the fire alarm had sounded, and he had gone to investigate where he encountered the Tenants’ son with a stick in his hands. BA testified that he had asked the Tenants’ son why he broke the alarm where the Tenants’ son started attacking him.
6. Another video was entered into evidence showing the Tenants’ son in a bathrobe attacking BA in the residential complex’s lobby from March 2, 2024. Another video from the same date shows the Tenants’ son using a stick to smash an object in the lobby. BA testified that the police were called and the Tenants’ son was removed from the residential complex.
7. BA also testified that on September 23, 2024, the Tenants had complained to him about their unit being cold. The Tenants advised BA that their son had broken a window in the unit. A quote from Ely’s Glass Company Limited from September 30, 2024, was entered into evidence, for a 3mm clear glass sliding window for $393.24.
8. A door was also damaged by the Tenants’ son on March 1, 2024. A quote from Bestway Renovations Inc. was entered into evidence for a total of $1,492.89. However, a receipt from VendorCafe dated March 20, 2024, showing a total of $1,686.95 is being claimed by the Landlord. BA testified that the Tenants never paid for any of these invoices when they were provided to them by the Landlord.
9. BA testified that the Tenants’ son had lived with the Tenants since May of 2023, testifying that he had a parking spot for his BMW.

Tenants’ Evidence

10. The Tenant testified that it was only she and her late husband who had moved into the unit. She testified that her son would visit but that he lived with a friend and would come and go from the unit.

11. With respect to the incidents that took place on February 28, 2024 and March 2, 2024, the Tenant testified that she was not at home and had been taking an online course with a friend.

12. The Tenant further testified that she did not have a good relationship with her son, but that he came and went from the unit to visit his father. She testified that due their age and medical issues, they were unable to control their son from coming and going to the unit.

13. The Tenants' Legal Representative essentially argued that the Tenants' son was not an occupant as the Tenants had no control over him coming and going from the unit. She referred to the case of *Musse v. 6965083 Canada Inc.*, 2021 ONSC 1085, specifically paragraph 26 which states:

    [26] *Permission, like consent, involves a state of mind. It is the voluntary agreement that something occur. It involves knowledge of what is going to happen and a voluntary agreement that it be done. A finding of permission did not inexorably flow from the mere fact of the appellant's presence at the altercation. A finding of permission required at lease some evidence upon which it could be inferred that the appellant knew someone else was going to spit on the superintendent and that she voluntarily agreed that it be done. That evidence is absent from the record"*

14. Section 89 of the Act states:

    89 *(1) 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 wilfully or negligently causes undue damage to the rental unit or the residential complex and the tenant is in possession of the rental unit.*

15. The Landlord's Legal Representative raised the fact that after the incidents from February 28 and March 2, 2024, the Tenants' son was incarcerated at the time yet knowingly permitted their son back into the unit in September of 2024.

16. Further, despite the Tenant's evidence that she never invited her son into the unit, her son had keys to the unit whether they had been his father's, or he made himself a key. The Tenants knew or ought to have known that their son had access to the residential complex and the unit.

17. The Tenants never requested the Landlord for a lock change, never asked the Landlord to trespass their son, nor ever called the police as a result of their son's apparently uninvited visits.

18. Therefore, on a balance of probabilities, I am satisfied that the Tenants, 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.

19. The evidence of the Tenant herself was that her son had been coming and going from the unit and denied that he lived there. Despite his apparent mental health issues and encounters with the Landlord's staff, the Tenants made no effort to try to stop their son from attending the residential complex and took no responsibility for any of the damage he caused.

20. The Landlord has incurred reasonable costs of $2,525.70 to repair the damage and replace property that was damaged and cannot be repaired.

Dail Compensation, Costs, Last Month's Rent Deposit & Interest

21. The Tenants were required to pay the Landlord $13,872.77 in daily compensation for use and occupation of the rental unit for the period from April 26, 2024 to January 1, 2025.

22. Based on the monthly rent, the daily compensation is $55.27. This amount is calculated as follows: $1,681.00 x 12, divided by 365 days.

23. The Landlord incurred costs of $186.00 for filing the application and is entitled to reimbursement of those costs.

24. The Landlord collected a rent deposit of $1,659.72 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of $41.72 is owing to the Tenant for the period from January 1, 2024, to January 1, 2025.

25. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of January 1, 2025.

2. The Tenants shall pay to the Landlord $13,872.77, which represents compensation for the use of the unit from April 26, 2024, to January 1, 2025, less any rent paid within that period.

3. The Tenants shall also pay to the Landlord $2,525.70, which represents the reasonable costs of repairing the damage and replacing the damaged property.

4. The Tenants shall also pay to the Landlord $186.00 for the cost of filing the application.

5. The Landlord owes $1,701.44 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.

6. The total amount the Tenants must pay the Landlord is $14,883.03, less any rent paid from April 26, 2024, to January 1, 2025.

7. If the Tenants does not pay the Landlord the full amount owing on or before May 9, 2026, the Tenants will start to owe interest. This will be simple interest calculated from May 10, 2026, at 4.00% annually on the balance outstanding.

May 4, 2026
Date Issued

Jagger Benham
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.