



Order under Section 87 / 88.2 / 89 Residential Tenancies Act, 2006

Citation: Mcewan v Dritsas, 2026 ONLTB 36447

Date: 2026-05-12

File Number: LTB-L-044413-23

In the matter of: 303, 429 SOMERSET ST W
OTTAWA ON K2P2P5

Between: Tia Mcewan Landlord

And

Margaret Dritsas Former Tenant

Tia Mcewan (the 'Landlord') applied for an order requiring Margaret Dritsas (the 'Former Tenant') to pay

- the rent and daily compensation that the Former Tenant owes.
- the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.
- the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property. The application alleges 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 May 4, 2026.

The Landlord's representative Roman Komarov the Landlord, the Former Tenant and the Former Tenant's representative Julian Nunez attended the hearing.

Determinations:

1. As explained below, the Landlord proved the allegations of undue damage to the walls contained in the application on a balance of probabilities. **Therefore, the Former Tenant shall pay the Landlord \$436.00.**
2. However, for the reasons below, the Landlord did not prove the other allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.

3. 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.

Service of the Application

4. The Board's interim order LTB-L-044413-23-IN issued November 19, 2023 found that the application had been filed within one year after the Former Tenant ceased to be in possession of the rental unit.
5. The Former Tenant's representative requested to make further submissions as to when the Former Tenant was no longer in possession of the rental unit, and whether the application was properly before the Board. I declined to hear about the issue because there was no request to review the interim order before me, and that determination had already been made by the previous Member.
6. The Former Tenant is open to filing a review of the interim order and that determination.
7. For the purposes of this hearing and this order therefore, I follow the determination of Member Brocanier made in the interim order, that the Former Tenant vacated the rental unit on June 3, 2022 which is the date the Former Tenant's Legal Representative submitted that the Former Tenant made the key available to the Landlord.

Rent Owning

8. The lawful rent was \$800.00. It was due on the 1st day of each month.
9. In their application the Landlord claimed the Former Tenant owed \$1,474.35 for the months of January 1, 2022 to February 28, 2022. The Landlord testified that she believed the Former Tenant was illegally in the rental unit and therefore refused to accept rent. She therefore testified she cancelled or did not accept the two e-transfers made by the Former Tenant for January and February. The Landlord produced no documentation in support of her submission that she received and then cancelled the e-transfers.
10. The Former Tenant provided bank account statements for January and February demonstrating that although the Landlord cancelled the December 31, 2021 e-transfer on January 7, 2022, the replacement e-transfer on January 12, 2022 and payment on January 31, 2022 were not cancelled.
11. On the basis of the evidence before me therefore, I find that the Landlord has not proven on a balance of probabilities that the Former Tenant failed to pay the rent in January and February of 2022.

Compensation for unpaid utility costs

15. At the hearing the Landlord withdrew their application for out-of-pocket expenses as they related to Utilities, and I granted that request..

Compensation for damage

Cleanliness

19. The Landlord has the onus to prove that the rental unit was so unclean as to cause undue damage, and that damage was caused wilfully or negligently by the Former Tenant.
20. The Landlord did not prove that the Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex by lack of cleanliness.
21. The Landlord presented photos of a bathtub, a wall, the baseboard in one location and a sink. All of these locations showed minor incidental debris, dust or easily cleaned dirt. The photos demonstrated a rental unit that was in a state of ordinary cleanliness indicating normal wear and tear..
22. Despite that the Landlord claims to have taken pictures of the damage as soon as she had access to the rental unit, the Landlord agrees she took no photos of the four garbage bags she claims she removed, the carpet she claimed was left behind or the storage unit she claims had personal possessions within it. She produced no general photos of the rental unit before or after the Former Tenant left. The Landlord did produce an invoice from JustJunk removal company as evidence that she removed goods, which was not itemized and of no assistance to my determinations. The Landlord also produced an invoice from a cleaning company for simple move-in, move-out cleaning. A Landlord is not entitled to reimbursement of general cleaning costs and is not entitled to have the unit returned to a state of perfection after a Former Tenant leaves.
23. Based on the insufficient evidence of lack of cleanliness to the point of undue damage (that is, outside of normal wear and tear), I find that the Landlord has failed to prove that the Former Tenant, another occupant of the rental unit or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.
24. I note the Landlord did not claim substantial interference in her application, which many have entitled her to out-of-pocket expenses for the effort to remove debris, however, I also note the Landlord failed to prove the extent of the debris, therefore, even if substantial inference had been claimed, no remedy could follow.

Appliances

25. The Landlord claimed that she had to replace the fridge, stove and dishwasher due to lack of cleanliness and damage.
26. The Landlord testified the fridge shelf was cracked and the drawer slide damaged in some way. She acknowledged the fridge operation was not impaired. The fridge was almost 19 years old.
27. The Landlord testified the oven and range hood were so greasy she had to remove them and buy new ones, and that it was impossible to clean them. The interior light did not work, but the oven and stove functioned. She gave no evidence that there was an attempt

to clean the oven or change the light bulb. The Landlord showed a photo of the range hood which appeared in an ordinary state of cleanliness after use from cooking for 4 years. The grease the Landlord claims to be on the range hood screen was not evident from the photo, although there the clear discoloration is in my view normal for a screen that is 19 years old. The Landlord maintained she was required to clean the interior of the exhaust pipe as well. She acknowledged the range hood functioned.

28. The Landlord alleges the dishwasher was leaking, and she was told by the plumber who removed it that the food trap was full and the bottom had rusted. The dishwasher was 10 years old having been previously replaced before this tenancy. No report by the plumber who removed the dishwasher was produced. However the plumber's invoice states the dishwasher was removed at the request of the Landlord and makes no mention of damage.
29. No photos were taken of the dishwasher damage. No photos were produced of any appliance, nor the fume hood exhaust pipe, nor any damage alleged.
30. The Former Tenant produced communication sent to the Landlord in September and October of 2021 notifying the Landlord of the failed light bulb and requesting that it be repaired. The work was never done by the Landlord. The light bulb was clearly a maintenance issue.
31. The Former Tenant testified she was not aware of any problems with the fridge, oven or dishwasher apart from the failed light bulb in the oven. She saw no leaking from the dishwasher.
32. Absent supporting photos of the damage and in light of the Former Tenant's denial of any damage and the age of the appliances, I am not satisfied that the Landlord has proven on a balance of probabilities that the Former Tenant or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the appliances in the rental unit

Nicotine Damage

33. The Landlord claimed the rental unit was damaged by smoking. The Landlord also claimed evidence that the Former Tenant was not permitted to smoke in the rental unit.
34. It is not disputed that the Former Tenant's mother was a smoker. The Former Tenant agreed that her mother smoked 5 times a day. She testified that her mother smoked on the balcony and not inside. I am satisfied based on the evidence provided that the Former Tenant was permitted to smoke in the rental unit either by grandfathering or acquiescence. The Landlord failed to establish on a balance of probabilities that the Former Tenant did not comply with the grandfathering of her right to smoke that was offered by the Condo Corporation when they changed the rules in 2019.
35. The Landlord also acknowledged that she did not serve the Former Tenant with an N5 notice of termination for smoking in the rental unit, despite her claim the Former Tenant was breaching the condo board rules and was not grandfathered. Her testimony regarding smoking complaints received by the condo corporation was hearsay and double hearsay. The only *nearly* direct evidence of smoking is a video the Landlord did not produce and

which was not qualified as to the date and time it was taken, which she claims shows the Former Tenant's mother smoking on the balcony. This testimony aligns with the Former Tenant's testimony that her mother only smoked outside.

36. The Former Tenant was unable to cross examine either the condo corporation manager or any of the 'complainants', and for that reason I give little weight to the documents which suggest the Former Tenant was in breach of a smoking prohibition a month before the Former Tenant vacated in 2022.
37. This is not a substantial interference claim. The Landlord failed to claim substantial interference in their application. This application is about damages. Whether the Former Tenant was permitted to smoke is irrelevant. I say this because permission to smoke is not evidence for or against undue damage. Regardless of the Former Tenant's right to smoke in the rental unit, the Landlord must prove damage occurred.
38. The Landlord produced no photos of any nicotine staining and only provided her personal smell test in support of her claim that the walls and ceiling required specialized treatment.
39. Given the absence of supporting evidence that there was undue damage to the rental unit from smoking, I am left with the conclusion that there was no damage from smoke. I am not satisfied that the Landlord has proven on a balance of probabilities that the Former Tenant or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage by smoking.
40. The Landlord's claim regarding smoking damage will be dismissed.

Wall Damage

41. The Landlord claimed the Former Tenant caused holes in the walls of the rental unit.
42. The Landlord's evidence at the hearing is limited to a small area, approximately 4" long and 2" high, behind a cabinet, that the Former Tenant installed, where the drywall surface had been damaged and removed, and the bathroom towel bar had come free, leaving holes behind.
43. The Former Tenant showed a video of the bathroom towel bar and acknowledged causing the damage on the day before she moved out. I find that the Landlord has proven on the balance of probabilities the damage to these areas.
44. Regarding remedy, the contractor invoice produced by the Landlord is not sufficiently itemized to identify the cost to repair these spots. It may be that the towel bar holes could simply be filled with larger anchors. However, based on similar cases before me I find that it is not unreasonable to award the Landlord \$250 to repair the two areas of wall damage.

Flooring

45. The Landlord claimed the hardwood flooring in the main living area adjacent to the kitchen island was damaged by water.

46. The Landlord produced a photo of the flooring damage, showing buckling and cupping of several wood boards in the approximately 3x3 area adjacent to the island. The Former Tenant produced a video created on the date she moved of the flooring damage, and acknowledged she found that damage when she was preparing to move.
47. I am satisfied that the flooring was damaged in all probability from a dishwasher leak. I am not satisfied that the damage was caused by the willful or negligent conduct of the Former Tenant.
48. The Landlord did not prove the Former Tenant intentionally allowed water to damage the floor. I accept the testimony of the Former Tenant that they were not aware the dishwasher may have been leaking.
49. I have considered the case law presented to me in support of the proposition that a tenant is responsible for continuing damage where disrepair is known to them but not reported to the Landlord in a timely manner.¹ I agree with the Landlord that this is the law. However, I also agree with the Former Tenant's representative that those cases are not on point, the Former Tenant in those cases being obviously aware of the disrepair and resulting damage for some time.
50. In this case, the Landlord did not establish the Former Tenant was aware of the damage before the final day of her tenancy, or when the leak may have occurred. I say this because both the Landlord and Former Tenant provided evidence that during an inspection several months previously, there was an object covering the floor in that area.
51. The Landlord also failed to establish *when* the Former Tenant became aware of the damage. The Former Tenant testified she did not become aware of the damage until she was preparing to move. Her testimony was unshaken in cross examination. Although the walking area is narrow, the Landlord acknowledged the condo was packed with possessions when she inspected several months previously. I find it therefore entirely likely the Former Tenant never moved the object at the end of the island.
52. I note that the floor in the Former Tenant's video appears to be less damaged than in the Landlord's photos taken a month after the Former Tenant vacated. This suggests the leak may have been recent and continuing even after the Former Tenant left.
53. I accept the Former Tenant's evidence that there was no water coming from below the dishwasher to alarm her to a water leak. I note that the Former Tenant was not in the rental unit operating the dishwasher after she moved out, and therefore any further damage was not her responsibility. Although the Former Tenant agrees she did not inform the Landlord she saw the damage on the day she left, there is insufficient evidence before me to conclude the dishwasher was actively leaking when not in use. She could not have known the subflooring beneath the boards was still wet and causing further damage.
54. The Landlord has the onus in this case to prove that the Former Tenant knew, or ought to have known of the disrepair and resulting damage. The Landlord also has the onus to prove *when* the Former Tenant knew of this so it may be determined, on a balance of

¹ *Bourassa v. Stokes*, 2024 ONLTB 56254, and *Parthenioiu v. Alkhatib*, 2024 ONLTB 1569.

probabilities the extent to which the Former Tenant is responsible for the damage. I am not satisfied, based on the evidence before me that the Landlord has proved this.

55. Although the Landlord alluded to similar fact evidence that the Former Tenant has been evasive and not forthcoming with information in the past, she in fact gave no evidence of such behaviour. Moreover, as it is with similar fact evidence, failure to do some collateral thing is not evidence that a person failed to do the thing being claimed.

56. I find therefore that the Landlord has failed to prove on a balance of probabilities that the Former Tenant or a person whom the Former Tenant permitted in the residential complex wilfully or negligently caused undue damage to the hardwood flooring.

Window Damage

57. The Landlord led evidence that the Former Tenant left the window open causing damage to the paint around the windowsill. However, the Landlord did not claim this in their application, only presenting a photo of the window and peeling paint during the hearing. I find therefore that this issue is not properly before me.

Filing Fee Cost

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

It is ordered that:

1. The Landlord's claims with respect all matters except the damage to the walls are dismissed.
2. The Former Tenant shall pay to the Landlord \$250.00, which represents the reasonable costs the Landlord incurred as a result of the damage to the walls.
3. The Former Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Former Tenant owes the Landlord is \$436.00.
5. If the Former Tenant does not pay the Landlord the full amount owing on or before May 23, 2026, the Former Tenant will start to owe interest. This will be simple interest calculated from May 24, 2026 at 4.00% annually on the balance outstanding.

May 12, 2026
Date Issued

Julie Broderick
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.