



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

Citation: Reda v Mocko, 2026 ONLTB 41026

Date: 2026-05-28

File Number: LTB-L-084267-25

In the matter of: 817 KING RD
BURLINGTON ON L7T3K8

Between: Dina Reda Landlord

And

Agnieszka Mocko Tenant

Dina Reda (the 'Landlord') applied for an order to terminate the tenancy and evict Agnieszka Mocko (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.

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

The Landlord also applied for an order requiring the Tenant to pay the Landlord's 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 Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on May 21, 2026. Only the Landlord attended the hearing.

As of 10:13 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Preliminary Issue:

1. The Landlord also seeks to amend their application to seek \$1,798.90 for unpaid utilities and \$1,082.60 for damage to the rental unit. The request to amend was filed with the Board on January 26, 2026, and this was referenced in the adjournment sheet at the last hearing in which the Tenant and her legal representative were present.
2. As this clearly came to the Tenant's attention at the last hearing, I do not find any prejudice to the Tenant. The Landlord's request to amend their application is granted.

Landlord's L2 Application

3. As explained below, the Landlord has proven on a balance of probabilities some of the grounds for unpaid utilities and damage to the rental unit. Therefore, the Tenant shall pay to the Landlord \$1,664.99.
4. The Tenant was in possession of the rental unit on the date the application was filed.
5. The Tenant vacated the rental unit on November 20, 2025. As such, the Landlord's claim relates to the claim for utilities and damages only and no longer seeks termination of the tenancy.
6. By way of background, the Landlord states the tenancy began on August 23, 2023. She explained that she had met the Tenant and after learning about some personal circumstances the Tenant was facing, offered to allow her to rent what had been the Landlord's primary residence at 817 King Road, in Burlington, Ontario.
7. As the Landlord has a concurrent L1 application before the Board, this order will not address any requests for daily compensation or any last month's rent deposit held by the Landlord or interest owing to the Tenant (if any).

Tenancy Agreement

8. Although the parties did not sign a formal lease, per s.2 of the *Residential Tenancies Act* ('the Act'), a tenancy agreement can be written, oral, or implied. The parties contemplated the tenancy, and the Landlord submitted a series of e-mails between the parties (Doc-7194117, Ex. 1, page 31). In the e-mail from the Tenant dated June 29, 2023, the Tenant refers to paying rent, asks how she should pay the rent each month, and offers \$4,000.00 per month plus utilities.

9. I am satisfied, on a balance of probabilities, that although the parties did not sign the Ontario Standard Lease, the parties entered into a tenancy agreement based on the e-mail exchange the Landlord submitted into evidence.

Unpaid Utilities

10. In the June 29, 2023, e-mail from the Tenant to the Landlord, the Tenant says: "If you are comfortable with 4000/month plus utilities and I take care of the outside grass/snow removal....".
11. Based on this e-mail, I am satisfied that the parties contemplated that the Tenant would pay for utilities, although the utilities are not defined within the e-mail. Regardless, the Landlord is claiming \$1,798.90 of which \$1,664.99 is for water, hydro and gas services. This figure was prorated to the date of termination of the tenancy.
12. The Landlord submitted copies of the invoices in evidence. Based on this evidence, I am satisfied that the Tenant failed to pay utilities totalling \$1,664.99 as required by the rental agreement. An order shall issue.
13. However, the Landlord also claimed \$133.91 for internet which the Landlord provided to the Tenant. The Landlord submitted an e-mail from the Tenant dated August 26, 2024, in which the Tenant agreed to pay \$39.95 monthly plus tax for internet services (Ex. 1, pg. 33).
14. This claim is made pursuant to s.88.2(1) of the Act, which states that a Landlord may apply for an order requiring a tenant or former tenant to pay costs described in subsection 4 if while the tenant was in possession of the rental unit, the tenant failed to pay **utility costs** that were required to pay under the terms of the tenancy agreement. Subsection 4 refers to the landlord's ability to apply for costs for reasonable out-of-pocket expenses that the landlord has incurred because of the tenant's breach. [Emphasis added]
15. Utilities are defined in s.2 of the Act stating that utilities "means heat, electricity, and water." The issue the Landlord has is that the internet is not a utility as defined in s. 2 of the Act. Had the claim been made under s. 88.1(1) of the Act, the claim for the Landlord's out of pocket expenses may have been successful. However, given that the application sought the unpaid internet costs under Reason 3 in the amended application, the internet charges are not available as a remedy pursuant to s.88.2(1) of the Act. No order shall issue.
16. The total the Tenant owes the Landlord is \$1,664.99.

Damage to the Rental Unit

17. The Landlord also claims \$1,082.60 for damages to the rental unit. Specifically, the Landlord claims that the Tenant willfully or negligently damaged (i) the stovetop (ii) the ceiling and (iii) left the grass uncut resulting in the Landlord having to pay to have the upkeep done.

18. Subsection 89(1) says:

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.

[Emphasis Added]

19. This provision means that to succeed on an application like this a landlord must establish:

- There was property damage to the rental unit or residential complex;
- The damage is “undue” meaning that it is not normal wear and tear, and it is not insignificant; and
- The damage was a result of wilful or negligent conduct.

20. For the following reasons, I do not find that the Landlord has proven on a balance of probabilities that the Tenant willfully or negligently damaged the rental unit.

21. Negligence is defined as an individual who has a duty of care to avoid causing another individual harm, that the person’s behaviour fell below that standard of care which resulted in harm. Willfulness is somewhat different in that the individual would have had specific intent to cause the damage.

Stovetop & Ceiling

22. The Landlord claims that the Tenant negligently damaged the stovetop and seeks \$381.93 for the costs of new grates. Submitted into evidence were photos of the gas stove. There is what appears to be a cast aluminum or cast-iron grate that sits atop each element. Two of the grates are cracked. The Landlord states that these were in excellent condition before the tenancy began.

23. The Landlord alleges that these were cracked negligently because the Tenant has a social media following in which she prepares food. The Landlord submitted photos of the Tenant taken from her social media sites. These photos show the Tenant in the kitchen of the rental unit while cooking. The Landlord also submits that in her opinion, the Tenant was using the kitchen as a commercial kitchen because she profited from the videos she made. This use is inconsistent with normal wear and tear; thus, the Tenant should be held responsible for the damage.

25. The Landlord also claims for a leak in the ceiling of the main floor of the rental unit and seeks \$418.17 for the cost of repairing the damaged drywall. The Landlord asserts the Tenant regularly took baths in the master bathroom. In the period before the leak, there was no problem with leaking water. In the days after the leak, there were no further leaks. The Landlord's husband filled the bathtub three times to check to see whether there was a leak and found none. The Landlord asserts the Tenant must have negligently exited the bathtub and this caused the leak.
26. Essentially what the Landlord is alleging is an old legal maxim known in Latin as *res ipsa loquitur*, or the thing speaks for itself. In other words, because there had not been a problem before with the master bathtub, and there was no issue found afterwards, it must have been the Tenant's negligence that caused the leak. The Landlord argues the same thing with regard to the stovetop. The Tenant must have negligently caused the damage because it was not broken, and now it is broken, so the Tenant must have used it in some way which was inconsistent with normal use such as making her social media videos.
27. The problem with this assertion is two-fold. First, the Supreme Court of Canada in *Fontaine v British Columbia*¹ found that the test of *res ipsa loquitur* is unnecessary and confusing and instead said that judges should simply weigh all of the evidence before them. This means that simply saying it must be this way because there was no problem before, and there is now, is not sufficient to demonstrate culpability.
28. Second, s.89 of the Act states that the behaviour of the tenant must be willful or negligent. However, the Landlord has not satisfied me that the Tenant's behaviour fell below that of a reasonable tenant. The Landlord did not establish that the Tenant negligently used the bathtub in a way that fell below that of a reasonable tenant. For example, there is no evidence to support the Tenant allowed the bathtub to overflow and this is what resulted in the water damage.
29. Neither was any suggestion made that the Tenant somehow failed to act in the way a reasonable person might have to prevent the harm. Using the stove to cook, even if it may have been more frequent than an average person, is still consistent with using the stove in its intended manner and does not fall below the standard of a reasonable tenant. The Landlord suggests that the Tenant was using the kitchen in a "commercial" fashion, but again, that is not the test. The test is whether the conduct of the tenant fell below that of a reasonable tenant.
30. As such, I am not satisfied that the Landlord met her onus of proof on a balance of probabilities that the Tenant negligently damaged the rental unit. No order shall issue.

Lawn Maintenance

31. The Landlord's evidence demonstrates that the Tenant agreed to provide lawn care (see paragraph 10). The Tenant did not provide lawn care for three months. The Landlord claims \$282.50 to have the lawn maintained.

¹ *Fontaine v. British Columbia* (Official Administrator), [1998] 1 S.C.R. 424

32. This claim was made pursuant to s.89.1 of the Act. Section 89.1 of the Act states, in-part: "...repair of or, where repairing is not reasonable, the replacement of damaged property...". However, there is no damage here. Rather, there was a lawn that needed to be cut and maintained.
33. Similar to my earlier findings, had this claim been made pursuant to s.88.1 of the Act, it may have been successful. But as the allegation does not relate to damage to the rental unit per s.89.1 of the Act, the claim cannot be successful. No order shall issue.
34. This order contains all of the reasons within it. No further reasons shall issue.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 20, 2025.
2. The Tenant shall pay to the Landlord \$1,850.99 for the unpaid utilities and the cost of filing this application.
3. If the Tenant does not pay the Landlord the full amount owing on or before June 8, 2026, the Tenant will start to owe interest. This will be simple interest calculated from June 9, 2026 at 4.00% annually on the balance outstanding.

May 28, 2026
Date Issued

Jane Dean
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.