



Order under Section 89 / 87 Residential Tenancies Act, 2006

Citation: 6640061 Canada Inc v DeMontigny, 2026 ONLTB 47651

Date: 2026-06-23

File Number: LTB-L-100704-24-RV

In the matter of: 204 APPALACHIAN CIR
NEPEAN ON K2J6X4

Between: 6640061 Canada Inc

Landlord

And

Cathy DeMontigny
Daryle Hayes

Former Tenants

Review Order

6640061 Canada Inc (the 'Landlord') applied for an order requiring Cathy DeMontigny and Daryle Hayes (the 'Former Tenant') to pay the Landlord's reasonable out-of-pocket costs that are the result of the Former Tenant's conduct or that of another occupant of the rental unit or someone the Former Tenant permitted in the residential complex.

The Landlord also applied for an order requiring the Former Tenants to pay the Landlord's reasonable out-of-pocket costs that the Landlord incurred or will incur to repair or replace undue damage to property.

This application was resolved by order LTB-L-100704-24 issued on October 14, 2025.

On October 17, 2025, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On October 20, 2025, interim order LTB-L-100704-24-RV-IN was issued, staying the order issued on October 14, 2025 and directing the matter to a review hearing.

The request for review was heard on December 8, 2025. On December 16, 2025, interim order LTB-L-100704-24-RV-IN2 was issued granting the Former Tenant's review request and directing the matter to be heard de novo (anew) on its merits.

This application was heard de novo by videoconference on April 7, 2026. The Landlord's agent Shlomi Feldman, the Landlord's legal representative Elina Vasilieva, the Former Tenants and the

Former Tenant's legal representative Ti-Anna Hall attended the hearing. Marina Karshuli appeared as witness for the Landlord.

Preliminary:

1. On consent of the parties the application is amended to change the Landlord's claim for out-of-pocket expenses incurred for substantial interference pursuant to section 88.1 of the Act to a claim for arrears of rent pursuant to sections 87(1) (b) & 88 of the *Residential Tenancies Act, 2006* (the Act).

Determinations:

2. As explained below, the Landlord proved some of the allegations contained in the application on a balance of probabilities.
3. I am satisfied that the Landlord served the Former Tenants 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.
4. The Former Tenants vacated the rental unit on December 15, 2023. The application was filed within one year after the Former Tenants ceased to be in possession of the rental unit.
5. The Landlord's application claims the following:
 - \$3,565.12 in costs to repair damages to the rental unit.
 - \$9,415.00 in arrears of rent for the rental periods that the unit was vacant (3.5 months).

Evidence:

6. The parties agree that the rental property is a detached dwelling with a finished basement. The Former Tenants resided in the entire property from January 20, 2023 to December 15, 2023. The property was built on or about October 2022 and the Former Tenants were the first occupants of this property.
7. The parties agree that the tenancy was for a fixed term period of one-year from January 20, 2023 to January 19, 2024. The lawful rent was \$2,690.00 and was due on the 20th day of each month.
8. The parties further agreed that on or about October 21, 2023 there was a water / sewage back up in the basement of the unit. As the basement was finished, extensive damages were caused to the flooring and the drywall.
9. The Landlord takes the position that the Former Tenants were responsible for the sewage back up by flushing paper towels and cigarette butts down the toilet. Neither the Landlord nor their witness (realtor / Property Manager) could confirm seeing these items in or being flushed down the toilet during the tenancy. The Landlord however relied on an email received from a service manager of the builder dated November 14, 2023 (LL exhibit #1).

In the email the service manager states that the backup was due to sludge, cigarette butts and paper towels clogging the toilets plumbing. The email also contains photographs dated October 23, 2023 indicating that the pipes had wet and standing paper in them. The photographs are unclear as to which type of paper this is (paper towels or toilet paper) and show no indication of cigarette butts in the pipes.

10. The Landlord confirmed at the hearing that the costs to repair the damages to the basement as a result of the sewage back up were completed and covered under the builder's warranty. The Landlord however still claimed costs in the amount of \$2,938.00 for his realtor / property manager having to be present at the rental unit and supervise the workers during the repairs. The Landlord submitted into evidence invoices dated November 3, 2023, January 18, 2024 and March 22, 2024 (LL exhibit #2). The invoice dated March 22, 2024 is for services completed on February 15, 2024 and specifically states "attending sewer repair".
11. On cross-examination and when questioned about when the sewage back up was fully repaired, both the Landlord and their witness gave conflicting and non-credible testimony. The Landlord originally testified that the basement repairs were completed in 2023 and prior to January 2024. The Landlord's witness stated that the repairs were completed after 2024 and agreed that in February 2024 some "final touch ups" were still being completed. When the Landlord's witness was also asked on cross-examination as to why there was an invoice dated March 22, 2024 referencing repairs / repairs still being conducted in February 2024 if the repairs were completed prior, the Landlord's witness stated that this was a typo on the invoice because she "did not care to change the description of the work".
12. Both the Landlord and their witness confirmed that the rental unit was not advertised for rent until late January / early February 2024 and that the unit was re-rented on April 1, 2024. The Landlord submitted into evidence a copy of the new tenant's tenancy agreement confirming that the unit was re-rented on this date (LL exhibit #3). The Landlord's witness further confirmed that as the listing relator / agent, the unit was not advertised for rent until the basement repairs were fully completed.
13. The Landlord and their witness further testified that after the Former Tenants vacated, there was a strong odour of cigarette smoke in the rental unit and that the unit required carpet and general cleaning services to eliminate the odour of smoke. The Landlord submitted into evidence written correspondence from prospective tenants dated February 20, 2024, confirming the odour of cigarette smoke in the rental unit (LL exhibit #4).
14. The Landlord submitted into evidence two invoices dated February 8, 2024 and March 23, 2024 (LL exhibit #5). The invoices confirm that the Landlord incurred costs in the amount of \$307.36 for cleaning services and \$319.76 for carpet cleaning services. The Landlord also submitted into evidence photographs of the rental unit after the Former Tenants vacated confirming the presence of cigarette ashes and staining on the upstairs carpets (LL exhibit #6).
15. The Former Tenant Daryle Hayes testified at the hearing. Mr. Hayes admitted to smoking inside of the rental unit during the winter months but denied that he or his co-tenant disposed of cigarette butts or paper towels in the toilet.

16. Mr. Haynes further stated that at the time the Former Tenants vacated the rental unit (December 15, 2023), that the repairs in the basement were still ongoing.

Findings & Analysis:

Wilful and/ or Negligent Damages:

17. The Landlord's claim for damages is filed pursuant to section 89 of the Act which states:

89 (1) A landlord may apply to the Board for an order requiring a tenant or former 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,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex; and

(b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day subsection 21 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force.

18. Based on the evidence and submissions before the Board, I find that the Former Tenants have caused undue damage to the rental unit with respect to the cigarette odour and lack of cleanliness in the rental unit which required professional cleaning. The Former Tenant's own testimony confirmed that they smoked in the unit, and the Landlord further provided photographs confirming that the carpets in the rental unit had burn marks, cigarette ashes and stains that required cleaning. The Landlord also submitted invoices confirming the costs incurred to repair these damages.

19. As such, the Landlord is entitled to reimbursement of the costs incurred to clean and eliminate the cigarette odour in the rental unit (\$627.12).

20. With respect to the sewage back up however, I am not satisfied on a balance of probabilities that this issue was caused by the Former Tenants or that they should be held responsible for the Landlord's costs incurred.

21. The evidence before the Board is that the builder of the property paid for and conducted the repairs under the building warranty. Therefore, there were no costs incurred by the Landlord to repair or replace the damaged property. The Landlord's costs to send their relator / property manager to the unit during the repairs is a cost of doing business and not a cost to repair / replace undue damages as set out in section 89 of the Act.

22. I further find that there is insufficient evidence before the Board to determine that the Former Tenants were the cause of the sewage back up. The plumber / contractors who inspected the unit after the sewage back up were not present at the hearing to give oral testimony or to elaborate on their findings. Although the Landlord relied on an email from

a service manager after the inspection had occurred, the service manager was not the individual who inspected the unit and therefore the Landlord's evidence on these findings is double hearsay.

23. The evidence before the Board further confirms that the repairs were completed under the rental units building warranty. I find that if the damages had in fact been caused by the Former Tenants / Occupants of the unit that the builder would have refused this warranty coverage. Further, the photographs submitted into evidence by the Landlord are inconclusive to determine that cigarette butts or toilet paper was the nature of the clog / sewage back up.
24. The photographs show no signs of cigarette butts in the plumbing and although there is some clogged paper, it is unclear to determine that this is anything but standard toilet paper. Further, although the Landlord relies on the findings of the email received, there oral testimony seems to ignore the comments about "sludge" buildup in the plumbing to which there was no evidence to confirm that this was caused by the Former Tenants.
25. I therefore find that the sewage backup was due to builder defect on this newly constructed property and not by the conduct of the Former Tenants.
26. This portion of the Landlord's damages claim is therefore dismissed.

Rent Arrears:

27. The Landlord's claims for additional arrears of rent is filed pursuant to section 88 of the Act which states in part:

88 (1) If a tenant abandons or vacates a rental unit without giving notice of termination in accordance with this Act and no agreement to terminate has been made or the landlord has not given notice to terminate the tenancy, a determination of the amount of arrears of rent owing by the tenant shall be made in accordance with the following rules:

1. If the tenant vacated the rental unit after giving notice that was not in accordance with this Act, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in the notice, had the notice been given in accordance with section 47, 96 or 145, as the case may be.
2. If the tenant abandoned or vacated the rental unit without giving any notice, arrears of rent are owing for the period that ends on the earliest termination date that could have been specified in a notice of termination had the tenant, on the date that the landlord knew or ought to have known that the tenant had abandoned or vacated the rental unit, given notice of termination in accordance with section 47, 96 or 145, as the case may be.
- (3) Despite subsections (1) and (2), if the landlord enters into a new tenancy agreement with a new tenant with respect to the rental unit, the tenant who

abandoned or vacated the rental unit is not liable to pay an amount of arrears of rent that exceeds the lesser of the following amounts:

1. The amount of arrears of rent determined under subsection (1) or (2).
 2. The amount of arrears of rent owing for the period that ends on the date the new tenant is entitled to occupy the rental unit.
- (4) In determining the amount of arrears of rent owing under subsections (1), (2) and (3), consideration shall be given to whether or not the landlord has taken reasonable steps to minimize losses in accordance with section 16.
28. As the Former Tenants were on a fixed term tenancy agreement to January 19, 2024, the earliest date the Former Tenants could have lawfully terminated their tenancy was on this date and therefore an application under subsection 88(1) 1. of the Act would suggest that the Former Tenants are responsible for rent arrears up until January 19, 2024 or until March 31, 2024 as the unit was rented on April 1, 2024. However, the Board must consider subsection 88(4) of the Act and whether the Landlord took reasonable steps to minimize their losses and to re-rent the unit as soon as possible after the Former Tenants had vacated.
29. In this case, the evidence before the Board suggests that the Landlord did not advertise the unit for rent until late January / early February 2024, which is a month and a half after the Former Tenants vacated the rental unit and after the date that their fixed term tenancy agreement ended. The Landlord's own evidence further suggests that the unit was not re-rented sooner because the Landlord wanted to complete all the repairs / damages in the basement portion of the rental unit prior to listing the unit.
30. As I have not found the Former Tenants conduct to be the cause for the sewage back up and the damages in the basement of the unit, I find that it would be unfair to hold the Former Tenants accountable for the rent owing for the period that the unit was vacant as the delay in re-renting the unit was due to the Landlord addressing a maintenance deficiency in the rental unit and not as a result of the Former Tenants vacating the rental unit on short notice.
31. As such, the Landlord's claim for 3.5 months of arrears for the period that the rental unit was vacant is denied.
32. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
33. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Former Tenants shall pay to the Landlord \$627.12, which represents the reasonable costs the Landlord incurred as a result of the damage.
2. The Former Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.

3. The total amount the Former Tenant owes the Landlord is \$813.12.
4. If the Former Tenants do not pay the Landlord the full amount owing on or before July 4, 2026, the Former Tenant will start to owe interest. This will be simple interest calculated from July 5, 2026 at 4.00% annually on the balance outstanding.

June 23, 2026
Date Issued

Fabio Quattrociochi
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.