



Order under Section 31 Residential Tenancies Act, 2006

Citation: Kimberley v Garisto, 2026 ONLTB 48226

Date: 2026-06-23

File Number: LTB-L-048859-24

LTB-L-083081-24

LTB-T-039414-24

LTB-T-040852-24

In the matter of: 57 CITY PARK CIR
WOODBIDGE ON L4L0H2

Between: Susan Kimberley Landlords
Eddy Cancian

And

Kassandra Garisto
Noah Garisto Tenants

Susan Kimberley and Eddy Cancian (the 'Landlords') applied for an order requiring Kassandra Garisto and Noah Garisto (the 'Tenants') to pay the rent that the Tenants owe. (L9 Application)

The Landlords also applied for an order requiring the Tenants to pay the Landlords reasonable out-of-pocket costs that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement, and the Landlords reasonable out-of-pocket costs that the Landlords 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 Tenants permitted in the residential complex. (L10 Application)

The Tenants applied for an order determining that the Landlords:

- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenants or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenants. (T2 Application)

The Tenants also applied for an order determining that the Landlords failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards. (T6 Application)

These applications were collectively heard by videoconference on April 20, 2026.

The Landlord Susan Kimberley, the Landlords' Legal Representative Petar Guzina and the Tenants attended the hearing.

Determinations:

Who are the Tenants: Joint Tenancy and Possession of the Rental Unit

1. The parties agree that both Tenants entered into a tenancy agreement with the Landlords to rent the rental unit commencing October 15, 2023 for a fixed term ending April 14, 2024.
2. The Tenant Noah Garisto stated that he vacated the rental unit in March, 2024. The Tenant Noah Garisto did not return his keys to the Landlords after vacating the rental unit.
3. The tenancy agreement continued beyond the fixed term date of April 14, 2024 as a month-to-month tenancy.
4. The Landlords submit that the tenancy continues for both Tenants and there was no agreement to terminate Noah Garisto's tenancy
5. Based on the submissions of both parties, I am satisfied that this is a joint tenancy. Except in very specific circumstances pertaining to domestic violence, the *Residential Tenancies Act, 2006* (the 'Act') does not permit one joint tenant to sever their interest in an ongoing joint tenancy in the absence of an agreement by all the parties. In this case, there is no evidence that the parties agreed to amend the tenancy agreement to remove Noah Garisto as a Tenant.
6. The Tenant Noah Garisto is properly named as a Tenant in these applications.

L9 Application

7. The Tenants vacated the rental unit on July 1 2024. The Tenants were in possession of the rental unit on the date the application was filed.
8. The Tenants did not pay the total rent they were required to pay for the period from February 15, 2024 to June 30, 2026.
9. The lawful rent is \$3,400.00. It is due on the 1st day of each month.
10. The Tenants have not made any payments since the application was filed.
11. The tenancy ended on July 1, 2024, as a result of the Tenants moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date.
12. The Landlords had collected a rent deposit of \$3,300.00 from the Tenants and this deposit was applied to June's rent.
13. The rent arrears and daily compensation owing to June 30, 2024 less the last months rent deposit are \$8,900.00.
14. Interest on the rent deposit, in the amount of \$58.99 is owing to the Tenants for the period from October 14, 2023 to June 30, 2026.

15. The Landlords incurred costs of \$186.00 for filing the application and are entitled to reimbursement of those costs.
16. The Landlords are entitled to \$9,027.01. This amount includes rent arrears owing up to June 30, 2024 and the cost of the application minus the rent deposit and interest owing.

L10 Application

17. As explained below, the Landlords proved some of the allegations contained in the application on a balance of probabilities
18. The Tenants vacated the rental unit on July 1, 2024.
19. The application was filed within one year after the Tenants ceased to be in possession of the rental unit.

Unpaid Utilities

20. The Tenants failed to pay water costs that they were required to pay under the terms of the tenancy agreement.
21. The Landlords produced an invoice from Alectra Utilities associated with water charges in the Tenants name, dated July 29, 2024 in the amount of \$938.78.
22. The Landlords produced a letter from the Municipality of Vaughn, dated January 27, 2025 indicating that the unpaid amount of \$931.78 owing to Alectra Utilities has been added to the property taxes for the rental unit.
23. The Landlords incurred reasonable out-of-pocket expenses of \$931.78 as a result of the Tenants' failure to pay water costs that they were required to pay under the tenancy agreement.

Damages

24. Included in the Landlords' application is a claim for compensation in the amount of \$771.83 to repair damage and or replace property that was damaged in the rental unit.
25. In order for an application for compensation for damages made pursuant to section 89(1) of the Act to succeed, a landlord must establish the following:
 - (a) there was property damage to the rental unit or residential complex;
 - (b) the damage is "undue" meaning that it is not normal wear and tear and it is not insignificant; and
 - (c) the damage was a result of wilful or negligent conduct by the Tenants, occupant or guest.
26. In this context, the word "property" refers to the physical objects such as walls, ceilings, floors, appliances and fixtures in a residential complex.

27. If all of these factors are met, then the Board can award the landlord the reasonable cost of repair, or the replacement if it is not reasonable for the damage to be repaired.
28. The Landlords allege damage to the flooring in the rental unit, missing floor vent covers as well as a cost incurred to rent a waste disposal bin to remove items left in the unit.

Waste Disposal Bin Rental

29. The rental of a garbage disposal bin is not wilful or negligent undue damage to the rental unit or residential complex as prescribed in section 89 of the Act. As such, the Landlord is not entitled to compensation for the rental of the waste disposal bin.

Missing vent covers

30. The Landlords did not provide sufficient evidence with respect to the claim that floor vent covers were missing. No photographs of the missing covers were provided, and I am not satisfied that the Landlords have proven this component of their application on a balance of probabilities based on the evidence adduced at the hearing.

Damages to Floors

31. The Landlords claim that the flooring of the rental unit was damaged and required cleaning and polishing to remove scratches.
32. The Landlords provided one photograph of a scratched floor.
33. The Tenants along with their witness Jonathan Garcia testified that the flooring depicted in the photograph was in that condition at the time they moved into the rental unit.
34. With respect to the evidence before me I am not satisfied on a balance of probabilities that the alleged damage to the floor is “undue” meaning that it is not normal wear and tear and it is not insignificant, nor am I satisfied on a balance of probabilities that the scratches to the floor were a result of wilful or negligent conduct by the Tenants, occupant or guest.
35. The Landlords did not prove that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex.

T2 Application

Request to Amend

36. At the commencement of the hearing of the Tenants’ T2 and T6 applications the Tenants sought to rely upon amended applications filed with the Board on April 15, 2026.
37. The Landlords were opposed to the request to amend as the Tenants had not complied with the time frame for amendments as set out in an interim order.
38. An interim order was issued on February 18, 2025 in relation to LTB-T-039414-24 and combined that matter with LTB-L048859-24, LTB-L-083081-24 and LTB-T-040852-24.

39. The interim order also indicates that if the Tenants wished to amend their application prior to the hearing then on or before March 15, 2025 the Tenants were to serve their amended application along with all supporting documents on the Landlords, file a copy with the Board along with an affidavit of service. The Tenants did not comply with the interim order.
40. LTB Rule of Procedure 15 states that an applicant seeking to amend their application shall request this amendment in writing by serving the amended application to all other parties and filing the amended application and a Certificate of Service with the Board. The request to amend the application is then decided at the hearing.
41. However, Rule 15.4 allows the Board to exercise its discretion to grant a request to amend made at the hearing if satisfied the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.
42. As the Tenants had not complied with the interim order issued on February 18, 2025 and Rule of Procedure 15 the request to amend the application was denied and the Tenants proceeded on their original applications.

Illegal entry

43. The Tenants testified that on March 2, 2024 the Landlord Susan Kimberly illegally entered the rental unit without providing notice. Both Tenants testified that a showing of the rental unit had been scheduled and the Landlords gave the Tenant Cassandra Garisto notice, but the Tenant Noah Garisto did not receive notification of the showing and was asleep with his girlfriend. After being awoken by the yelling of the Landlord and being advised by Cassandra Garisto that a showing was scheduled he sent a text message to the Landlord asking her to skip his room. After the showing ended the Tenant Cassandra Garisto testified that the Landlord Susan Kimberly left the rental unit but remained on the property and after a period of time she re-entered the rental unit without permission and proceeded to the bedroom where the Tenant Noah Garisto was with his girlfriend. The Tenant Noah Garisto testified that the Landlord Susan Kimberly attempted to force the door open and was yelling and swearing at him attempting to give him a document. At the time both Noah Garisto and his girlfriend were not fully clothed and were attempting to sleep. The Tenants' witness Yessenia Rodriguez, Noah Garisto's girlfriend also confirmed the Tenants' version of events from that day.
44. The Landlord Susan Kimberly testified that she had received consent from the Tenant Cassandra Garisto prior to showing the unit and they she never left the property before re-entering the rental unit to attempt to serve a document on Noah Garisto.
45. On a balance of probabilities I prefer the evidence of the Tenants to that of the Landlord. Although the Landlord had permission from the Tenant Cassandra Garisto to show the rental unit. After the showing ended the Landlord left the unit and then re-entered without notice or permission to do so. The Landlord's re-entry into the rental unit at this time was illegal.
46. Although the Tenants' application alleges two other occasions when the Landlords illegally entered the rental unit it contained no particulars of the dates, times or particulars regarding these entries and insufficient detail for the Landlords to know how to defend

these allegations, as such I considered no further evidence or submissions with respect to any further alleged illegal entries.

Substantial interference and Harassment

47. The Tenants allegations of substantial interference and harassment relate to the illegal entry on March 2, 2024 and the conduct of the Landlord Susan Kimberly.
48. Sections 22 and 23 of the Act relate to substantial interference and harassment and state:
22. A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed substantially interfere with the reasonable enjoyment of the rental unit or the residential complex in which it is located for all usual purposes by a tenant or members of his or her household.
23. landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant.
49. Based on the evidence before me I am satisfied that the conduct of the Landlords substantially interfered with the reasonable enjoyment of the rental unit by the Tenants and constituted harassment.

Remedies

50. The Tenants sought the following remedies
1. The Landlords pay a fine;
 2. The Board end the tenancy;
 3. Moving and storage expenses; and
 4. A delayed eviction until August 1, 2024.
51. The tenancy between the parties has already ended as of the date of this hearing. The remedies the Tenants seek relating to ending the tenancy and delayed eviction are now mute.
52. A remedy must flow from the cause of the application. In this matter the remedy relating to moving and storage expenses does not flow from the Tenants application as the Tenants vacated the rental unit pursuant to an agreement to end the tenancy and not as a result of the Landlords' conduct contained in the Tenants' L2 application. As such an award for moving and storage costs would be inappropriate.
53. The Tenants request that a fine be imposed against the Landlords, but do not suggest an amount.
54. The Board's Interpretation Guideline # 16 on Administrative Fines says:
- An administrative fine is a remedy to be used by the Board to encourage compliance with the *Residential Tenancies Act, 2006* (the "RTA"), and to deter landlords from

engaging in similar activity in the future. This remedy is not normally imposed unless a landlord has shown a blatant disregard for the RTA.

55. I am not satisfied on the evidence before me that an administrative fine against the Landlords is appropriate in the circumstances.

T6 Application

56. The Tenant Kassandra Garisto testified that on May 20, 2024 an issue arose with the central air and it stopped working during a heat wave. She testified that on that same date she either called or sent a text to the Landlords, but no action was taken by the Landlords to address the issue.

57. The Tenant further stated that the issue resolved on its own after approximately one week.

58. The Landlord Susan Kimberly testified that at the time of the alleged issue with the central air the Landlords were in the woods of Quebec without cell service and upon returning were advised by the Tenant that she was able to get the central air working by fiddling with the thermostat, and that no action was required by the Landlords.

59. In *Onyskiw v. CJM Property Management Ltd.*, [2016 ONCA 477](#), the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

60. On an application to the Board, the person who alleges a particular event occurred has the burden of proof to establish that it is more likely than not that their version of events is true. In this application, the burden falls on the Tenants. I am not satisfied on a balance of probabilities that the Landlords failed to meet their maintenance obligations under subsection 20(1) of the Act. The Tenants' T6 application is dismissed.

It is ordered that:

1. The total amount the Tenants shall pay the Landlords is \$9,958.79. This amount represents:
 - \$9,027.01 for rent arrears owing and costs of the application minus the rent deposit and interest owing;
 - \$931.78 which represents the reasonable out-of-pocket expenses the Landlord incurred or will incur as a result of the unpaid utility costs.
2. The Tenants shall pay the Landlords the full amount owing by July 7, 2026.

3. If the Tenants do not pay the Landlords the full amount owing by July 7, 2026, the Tenants will owe interest. This will be simple interest calculated from July 8, 2026 at 4.00% annually on the balance outstanding.

June 26, 2026
Date Issued

Sean Ramage
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.