



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

Citation: Greer v Chisholm, 2024 ONLTB 1621

Date: 2024-01-09

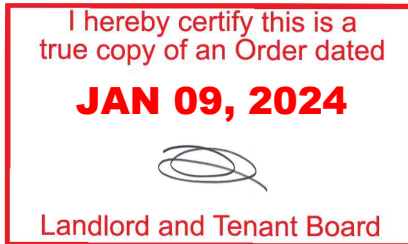
File Number: LTB-L-037953-23

In the matter of: UPPER UNIT, 181 BRANT AVE
BRANTFORD ON N3T3H8

Between: Nicholas Greer

And

Christine Chisholm



Landlord

Tenant

Nicholas Greer (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Chisholm (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or a person the Tenant permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully caused undue damage to the premises;
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex used the rental unit or the residential complex in a manner that is inconsistent with use as a residential premises and that has caused or can be expected to cause significant damage.

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

Nicholas Greer (the 'Landlord') also applied for an order requiring Christine Chisholm (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.

Nicholas Greer (the 'Landlord') also applied for an order requiring Christine Chisholm (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs 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 July 27, 2023 and November 16, 2023.

The Landlord and the Tenant attended on both hearing dates. The Tenant's support person, Adam Porter ('AP'), and the Landlord's witnesses, Lora Kertesz ('LK'), Blake Mutch ('BM'), and

Carmen Greer ('CG'), attended the hearing on July 27, 2023.

Preliminary Issues:

1. The Tenant requested an adjournment at the outset of the July 27, 2023 hearing, saying that she had just received disclosure from the Landlord on Monday, July 24, 2023, she did not have time to go through it, and wanted to seek legal advice.
2. The Landlord opposed the request, saying that even if the Tenant just received the disclosure on July 24, 2023, it was served on Friday, July 21, 2023. Either way, he said that it was only two pages, and the rest of his disclosure was given to the Tenant on July 16, 2023.
3. This matter was originally scheduled to be heard on June 12, 2023, but was adjourned at the Landlord's request. The notice of hearing for that date was mailed to the Tenant on May 30, 2023. This is deemed to have been served on the Tenant 5 days after mailing, being June 4, 2023. The Tenant has known of this proceeding since at least that time.
4. The Tenant then received another notice of hearing in advance of the July 27, 2023 hearing date. Both notices of hearing advised the Tenant to seek legal advice prior to the hearing, and provided information to help find a local legal clinic through Legal Aid Ontario, if needed.
5. Parties are expected to act with diligence with respect to LTB proceedings, and there was no explanation as to why the Tenant had not sought legal advice prior to the hearing.
6. I did not find that an adjournment was warranted in the circumstances so the Tenant can seek legal advice. I also did not find an adjournment warranted in the circumstances because two pages of disclosure were submitted several days late by the Landlord. I therefore denied the adjournment request.
7. There was also a preliminary issue raised as to whether Adam Porter ('AP') should be added as a party to this application. AP lives in the rental unit with the Tenant, but the written tenancy agreement lists only the Tenant as a tenant. There was no subsequent agreement between the Landlord, Tenant, and AP to add AP to the tenancy agreement as a tenant. I therefore find AP to be an occupant of the rental unit, and not a tenant. AP therefore does not need to be added as a party to this proceeding.

Determinations:

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application, but it is not unfair in all the circumstances to grant relief from eviction, subject to conditions.
9. The Tenant was in possession of the rental unit on the date the application was filed.

N7 Notice

10. On March 24, 2023, the Landlord gave the Tenant an N7 notice of termination ('N7 notice'). The N7 notice alleged that the Tenant or someone living with or visiting her willfully caused damage to the front door leading to the rental unit on May 26, 2022; on

September 20, 2022, the Fire Department responded to an open fire on the roof of the building, which is a restricted area under the tenancy agreement; on October 6, 2022, the Fire Department was again called to the residential complex for an open fire on the roof of the building, for which the Landlord received a bill from the Fire Department; the Landlord learned in February 2023 that the Tenant or someone living with or visiting her willfully damaged the window at the rear of the rental unit on top of the stairs; and the Tenant has on an ongoing basis moved furniture and other objects on the flat roof of the building which can ruin the roof and cause damage, as it is not meant to be used as living space.

Landlord's Evidence

Evidence of LK

11. LK said she has owned a property adjacent to the residential complex for 17 years. She used to live there but it is presently rented to a tenant.
12. LK gave evidence that she has received complaints about the Tenant's dog defecating and urinating on the roof of residential complex, and that the dog has jumped off the roof. She said it creates a foul smell, and that she sees the Tenant's dog unsupervised on the roof frequently when she drives by, which she does frequently because it is on her way home from work. This issue was not included in the N7 notice and cannot be relied on as grounds to terminate the tenancy.
13. LK said that she has also frequently seen the Tenant on the roof of the building. She said that on more than one occasion she is aware that the Tenant had a fire on the roof, but she mainly sees the Tenant and others living with or visiting her sunbathing or drinking beer on the roof. She said there is no barrier around the perimeter of the roof to safeguard against a fall. She said she thinks the roof is about 14 feet high.
14. LK referred to a photo that she said she took of the building roof in about May or June 2023 (DOC-1596873). The photo reveals a flat roof with no barrier around the perimeter; two windows and one door leading from the rental unit onto the roof, and several chairs, tables, plants, and an inflatable pool on the roof surface. She said that two windows were broken.
15. LK referred to a second photo she said that she took in May or June 2023 which shows a broken windowpane in one of the rental unit windows overlooking the rooftop of the residential complex (DOC-1596851). She said that the windowpane has not been replaced.
16. LK said she gets complaints from her tenants, and that she is concerned about the dog feces and urine, as well as the structure of the roof because there are so many objects on it.
17. LK also referred to a letter dated June 19, 2023 that she sent to the Landlord (DOC-1524440). The letter expresses concern about the issues with the dog on the roof, and that her tenant has told her several times that the Tenant has had fires on the roof, resulting in the Fire Department responding. The letter also raises concern about the roof being "unkempt" and the many objects kept there.

Evidence of BM

18. BM said he has operated a construction and renovation business for about 25 years. He said the Landlord contracted him to do repairs and inspect damage at the rental unit and residential complex.
19. BM referred to a photo of the entry door leading to the rental unit (DOC-1309106). He said he took this photo, and a believes it was in the Fall of 2022. The photo shows a large split on the side of the door above, around, and below the locking mechanism.
20. BM referred to a second photo that he took of the door frame for the entry door leading to the rental unit (DOC-1309110). He said he believes this photo was also taken in the Fall of 2022. This photo shows the door frame significantly damaged, and the interior trim pulled away from the frame.
21. BM also referred a quotation to repair this door that he prepared for the Landlord, dated February 26, 2023. He said that he believes that the door needs to be replaced, and it cannot be repaired. The quote to replace the door is \$1,655.45, inclusive of HST.
22. BM was asked if he had seen a video of what may have happened to the door, and he said he had.
23. A video was played at the hearing (DOC-1309048). The video is taken from across the street from the exterior entry door leading to the rental unit, and shows a person in a blue shirt walking toward the rental unit. The person tries to open the door, and when it does not open, starts kicking it. The person then slams into the door with their shoulder several times until the door swings open, and the person falls forward as the door opens. BM said he believes the person in the video is AP, and that it appears that a lot of force was used based on how the door swung open in the video.
24. A second video was also played (DOC-1309068-22). This video is also taken from across the street from the exterior entry door leading to the rental unit. This video shows a person with dark pants and a light shirt walk up to the entry door and kick the door open. BM said that the person in this video is the Tenant.
25. These videos were taken on May 26, 2022.
26. BM said he has assessed damage to the building's roof, and that there is significant damage to some areas. He said that he has sealed areas that are sealable, and that the room is not intended to hold chairs, people, animals, garbage, furniture, et cetera.
27. BM referred to the following photos of the roof area which he took. He said he believes they were taken in the Spring of 2023:
 - i. DOC-1309086 – depicts various items and debris on the roof;
 - ii. DOC-1309133 – depicts a small table and several plant pots full of dirt on the roof;
 - iii. DOC-1309149 – depicts an old oven on the roof;
 - iv. DOC-1309179 – depicts patio furniture, a mattress, and other items on the roof; and
 - v. DOC-1309213 – depicts various items on the roof from a different angle.

28. BM said that the roof membrane is a rubberized membrane with tar and gravel on top to keep it from wearing. He said that the tar is flammable.
29. BM estimated that the roof is about 22 feet high, and that there is no barrier around the perimeter.
30. BM said he has seen dog feces on the roof, and he could smell it. He said the feces and acid from dog urine can also damage the roof.

Evidence of CG

31. CG said she is the Landlord's wife. She said that the Tenant lives in the rental unit with AP and a dog, and that she has occasionally seen a child there.
32. CG gave evidence about communications with the Municipality about an unlicensed dog at the rental unit, and a dog defecating on the roof. This was not included in the N7 notice and so cannot be considered with respect to whether the tenancy ought to be terminated.
33. CG said that in May 2022 she received a phone call from the Tenant saying there was a break in at the rental unit and they were concerned about their safety. CG went to a business across the street to see if their security camera may have captured the break in. It is from this business' security camera that the videos referred to above (DOC-1309048 and DOC-1309068-22) were obtained by CG.
34. CG also referred to two other videos:
 - i. DOC-1524562 – CG said this video is also from May 26, 2022. A person in a blue shirt can be seen much closer to the camera. CG said that person is AP, and it is the same person from the video at DOC-1309048; and
 - ii. DOC-1524591 – CG said this video is also from May 26, 2022. A person in a blue shirt, who CG said is AP, walks to and enters the exterior door leading to the rental unit.
35. CG also said that the Fire Department has been called twice because the Tenant had an open fire on the roof of the building. She said that she received a bill from the Fire Department for one of their attendances in October 2022.
36. CG referred to a Brantford Fire Department incident report, dated September 10, 2022 (DOC-1474392). The report indicates that the Tenant had been having a "small bonfire" on the roof, but had extinguished it by the time the Fire Department arrived. It also says that the Tenant was informed that this is not permitted.
37. CG referred to a second Brantford Fire Department incident report, dated October 6, 2022 (DOC-1596728). The report also describes an open air bonfire on the roof, which was extinguished without incident.
38. CG also referred to an invoice from the Brantford Fire Department, dated October 7, 2022 (DOC-1309413). The invoice is for \$676.18, inclusive of HST, and includes the following description:

FIRE DEPARTMENT INVOICING
RESPONSE TO UNAUTHORIZED OPEN AIR BURNING

PROPERTY ADDRESS: 181 BRANT AVE

DATE OF VISIT – 10/6/2022

39. CG also referred to the tenancy agreement (DOC-1596728). Page 4 of the lease includes a clause stating:

The roof top is not to be used for any purpose unless given written permission by the landlord with a signature being required by the Landlord

40. CG referred to a photo of one of the windows in the rental unit looking out onto the roof. The windowpane is broken. CG said that the Tenant told her that she had broken it by accident.
41. CG said that when she asked the Tenant about the damage to the door, the Tenant said she did not know what happened to it.

Tenant's Evidence

42. The Tenant said that the Landlord asked that all of the objects on the roof be removed, but she had to wait until the Spring to do so. She said the photos referred to by the Landlord's witnesses were from the Spring when the snow melted. She said the stove on the roof is an old stove from the unit, and she replaced it and put the old one outside. She said the mattress has been removed, and was only there temporarily after she bought a new one. She said the pool on the roof was blown up to dry out, but was not filled with water on the roof.
43. The Tenant said all the clutter on the roof has been removed, and the only items remaining are potted plants. She said she only goes on the roof to water them.
44. The Tenant said that there is a door from the rental unit leading to the roof, and she opens it for ventilation. She said she understands it may be an issue, but said the dog is not aggressive and has never jumped off the roof. She said the dog has defecated on the roof but she cleaned it up immediately.
45. The Tenant said that the fires were on a small hibachi burning a fire log, and that she has not had a fire on the roof since October 6, 2022.
46. The Tenant said that the videos of her and AP entering the rental unit door by force are out of context. She said that the door was damaged because of the break in, so the lock would stick and so she had to push through it. She said that this may have damaged the door further, but believed that she should not have to pay the full amount.
47. The Tenant said she does not oppose paying the Fire Department bill or the bill to repair the broken window.
48. The Tenant said that only she and AP live in the rental unit, along with their dog.

Law & Analysis

49. N7 notices of termination are reserved for serious cases, including where the conduct of a tenant or someone living with or visiting a tenant seriously impairs or has seriously impaired someone's safety in the residential complex, and where a tenant or someone living with or visiting the tenant willfully causes undue damage to the rental unit or residential complex. The notice period is short and the Act does not allow for a cure period. Resort to the use of an N7 notice has been reserved for cases involving "weighty, grave, or momentous conduct": *2276761 Ontario Inc. v. Overall*, 2018 ONSC 3264 (CanLII), para 12.
50. With respect to the Landlord's allegations that the conduct of the Tenant or someone living with or visiting her has seriously impaired or seriously impairs the safety of a person, the relevant conduct can include actual impairment or a "real risk" of serious impairment of safety, and the act or omission must have occurred in the residential complex: ss. 66, *Residential Tenancies Act, 2006*; *2276761 Ontario Inc. v. Overall*, *supra*, para 12; *Furr v. Courtland Mews Cooperative Housing Inc.*, 2020 ONSC 1175, para 17.
51. A foreseeable act or omission that could result in or may result in a serious impairment of safety can satisfy the test for whether there was a real risk of a serious impairment of safety as a result of the conduct of the Tenant or someone living with or visiting her: *Furr v. Courtland Mews Cooperative Housing Inc.*, *supra*, para 17.
52. With respect to the Landlord's allegation that the Tenant or someone living with or visiting her willfully caused undue damage to the rental unit or the residential complex, the damage must have been caused by some purposeful or intentional act or omission. The damage must also be "undue", which means that it is damage that is beyond normal or reasonable wear and tear: ss. 63(1)(a), *Residential Tenancies Act, 2006*.
53. With respect to the Landlord's allegation that the Tenant used the rental unit or residential complex in a manner that is inconsistent with use as residential premises, and that causes or can reasonable be expected to cause, damage that is significantly greater than the damage required to give a notice under subsection 63(1)(a) or 62(1) of the Act, the Landlord must prove that the Tenant used the rental unit or residential complex in a way that was inconsistent with its use as a residential premises, and that caused or can cause serious damage.
54. To prove a fact on a balance of probabilities, there must be sufficient "clear, convincing, and cogent" evidence of the fact: *FH v. McDougall*, 2008 SCC 53 (CanLII), para 46.

Serious Impairment of Safety

55. By having two fires on the roof of the residential complex, the Tenant engaged in conduct that created a real risk of a serious impairment of safety of a person. This conduct occurred in the residential complex, and it was foreseeable that this could have resulted in a serious impairment to someone's safety.
56. The evidence before me was that underneath the layer of stones on the roof is a layer of flammable tar. While the Tenant may have believed the fire was well controlled, a simple accident while engaging in this conduct could have resulted in the building catching on fire, thereby seriously impairing the Tenant's safety, and that of anyone else in the building at the time. Having a fire on the roof once would be enough to satisfy the legal test, and I find

it particularly troublesome that after the Fire Department responded to the first fire on September 10, 2022 and warned the Tenant that “open air burning wasn’t permitted”, the Tenant showed blatant disregard for this warning and held another fire on the roof, resulting in the Fire Department returning and issuing an invoice to the Landlord for this attendance.

57. For the foregoing reasons I find that the Tenant or another occupant of the rental unit has seriously impaired the safety of themselves and any other person who may have been in the residential complex at the time of the two fires. This conduct occurred in the residential complex.

Undue Damage

58. The N7 notice alleged that the rental unit window was broken by the Tenant or someone living with or visiting her. The Tenant admitted to accidentally breaking the window, but there was no evidence that the Tenant *willfully* caused this damage. The Landlord has failed to discharge his burden of proof that the Tenant willfully broke this window.
59. The Landlord alleged in the N7 notice that the Tenant putting furniture and other objects on the flat roof “can ruin the roof and lead to damage as it [is] not meant to be utilized as a living space”. The language of clause 63(1)(a) of the Act requires there to have been actual damage, not some potential damage. There was no clear, convincing, and cogent evidence to prove that there was any actual damage to the roof caused by the Tenant placing objects on it. BM gave some vague evidence about damage to some areas of the roof, but this was not adequate to prove that there was undue damage caused to the roof by the Tenant’s willful conduct, or that of someone living with or visiting her.
60. The N7 notice also alleges that the Tenant or someone living with or visiting her willfully damaged the front door leading to the rental unit.
61. The Landlord presented video evidence of both AP and the Tenant entering this door forcefully. The May 26, 2022 video of AP shows him forcefully kicking this door several times, and then shouldering the door with such force that he fell into the entryway as the door swung open. The video of the Tenant from the same day also shows her kicking the door open, though with less force than AP had used.
62. The damage shown in the photos of the door referred to by BM were consistent with it being forcefully kicked or shouldered open.
63. The Tenant did not deny that the videos showed her and AP forcibly opening the door. Her explanation was that the door was already damaged by a previous break in, which is why they had to use force to enter. I do not accept this explanation. The Tenant’s allegation about a break in was bald. It was not supported by any documentary evidence such as a police report, or even an incident number.
64. On the evidence before me, I find that it is more likely than not that the damage to this door depicted in the photos referred to by BM was caused by AP and the Tenant kicking and shouldering the door forcefully. This conduct was intentional, and the damage caused to the residential complex was undue.

65. For the foregoing reasons, I find that the Tenant and occupant of the rental unit have wilfully caused undue damage to the residential complex by kicking and shouldering the front door leading to the rental unit, causing significant damage to the door and the frame.

Inconsistent Use

66. There was no evidence that the Tenant or someone living with or visiting her used the rental unit or residential complex in a manner inconsistent with its use as a residential premises.
67. The Landlord has therefore not proven that the Tenant or someone living with or visiting her has used the rental unit or the residential complex in a manner that is inconsistent with use as residential premises and that has caused or can reasonably be expected to cause significant damage.

Relief from Eviction

68. The Tenant alleged that the LTB is required to refuse to grant the Landlord's application because the Landlord is in serious breach of his responsibilities under the Act or of a material covenant of the tenancy agreement, pursuant to clause 83(3)(a) of the Act. Clause 83(3)(a) states:

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord **is** in **serious** breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

69. Use of the word "serious" to qualify the word "breach" means that it is not enough for a tenant to establish a landlord is in breach of the Act or a material covenant of the tenancy agreement to engage this provision. The breach must be a serious one. In my view, for a breach to be "serious" it needs to be one that has a significant impact on the Tenant's use or enjoyment of the rental unit; one that poses a safety issue, or there must be some other factor that would render it more than just a breach of the Act or tenancy agreement. Use of the word "is" in respect of the timing of the breach means that the serious breach must be ongoing at the time of the hearing.
70. The Tenant raised several maintenance issues under clause 83(3)(a) of the Act.
71. The Tenant said that the window that she accidentally broke has not been repaired. She said that she complained to the Landlord about this in February 2023, and in September 2023 the Landlord had the windowpane removed and the window boarded up. She presented a photo of the boarded-up window that she took on September 18, 2023, and said the window is in the same condition presently.
72. The Landlord is obligated to maintain the rental unit in a good state of repair and fit for habitation. The window is missing a pane and is boarded up. It is not in a good state of repair. However, I do not find this to be a *serious* breach of the Act. The Tenant said she cannot open the window to air the rental unit out, but apart from that she did not refer to any significant impact that this issue has on her. Further, this is the window that the Tenant

admitted to accidentally breaking, and under section 34 of the Act, she is responsible for the repair of undue damage to the rental unit or residential complex caused by her negligent conduct.

73. The Tenant also said that another window in the unit is not properly sealed and rain and snow can enter the unit through it. She presented a photograph depicting a small amount of snow on the inside of the window. She said she told the Landlord about this issue 2 years ago and he has made no attempt to repair it.
74. On cross-examination, the Tenant confirmed that the Landlord's window contractor attended to repair the front windows, but this still needs to be sealed.
75. There was no evidence that the issue with window sealing is presently having a significant impact on the Tenant's use or enjoyment of the rental unit, or that it is creating any safety issue. I therefore do not find this to be a *serious* breach of the Act or the Landlord's obligations under the tenancy agreement.
76. The Tenant also said that the heat in the rental unit is not working. To support this assertion she presented a photo of the thermostat in the rental unit. It reads "Heat On", is set to 29.0 degrees, but the temperature reading is 12.5 degrees. She said this photo was taken on December 23, 2022, the heat was not working then, and still isn't. She said she uses space heaters to heat the rental unit. She said she told the Landlord about this 2 years ago and that he has only attended to look at the thermostat.
77. On cross-examination, the Tenant was referred to another photo taken by CG on November 14, 2023 (DOC-2276953-23). In this photo, the thermostat reads "Heat On", it is set to 22.0 degrees and the temperature reading is also 22.0 degrees. The Tenant then said that it was working that day, but has not worked since. I do not find the Tenant's evidence on this point to be credible. Prior to cross-examination, she said that the heat was not working on December 23, 2022, and still doesn't, implying that it simply does not work and has never been repaired. When confronted with evidence contradicting this, she said that it worked the day CG was there and the day before, but not since. She then said it works some days and not others. The Tenant's evidence was inconsistent and changed when confronted with information contrary to what she initially said. I find it unlikely that the heat somehow, without explanation, began working the day that CG attended but otherwise did not work.
78. The Tenant presented no evidence, apart from her *viva voce* evidence, that the heat currently does not work. Her photo of the thermostat was from nearly a year ago. She has failed to prove on a balance of probabilities that the heat in the rental unit does not work, so I do not find that the Landlord is in breach of the Act or the tenancy agreement with respect to the heat.
79. The Tenant said that there is a light fixture that is not working. She said it is not the bulbs, but is the fixture itself that does not work. She said this is an interior light in the residential complex that lights a hallway. The Landlord suggested that he was not told that the light fixture did not work. On cross-examination, the Tenant said this is the light fixture at the bottom of the stairs that lead to the rental unit, and that the light has never worked.
80. When asked why she did not tell CG and the Landlord's handyman when they were at the rental unit 2 days before the hearing date, the Tenant said she had told the handyman

about this previously. The Landlord said he was not aware of this issue before the hearing date. I note that at the end of the July 27, 2023 hearing, I asked the Tenant for a list of the issues she intended to raise under clause 83(3)(a). She identified eight distinct issues at the time, but did not mention this light fixture.

81. I accept the Landlord's evidence that he was not aware of this issue before the hearing. Upon being made aware of a maintenance issue, the Landlord must be given an opportunity to address it in a timely and effective manner before an issue like this could be considered a serious breach of the Act or tenancy agreement.
82. The Tenant said that the bathroom tap leaks from the faucet and the pipe underneath. She presented photos of the tap that were taken June 18, 2020, but no photo or other evidence of a leak underneath the sink. She said that she told the Landlord about this issue one and a half years ago. She said the tap looks the same today, except there is some sealing around it now. She said it still leaks.
83. On cross-examination, she said that the Landlord's handyman looked at this two days before the hearing, but it still leaks.
84. This may be a breach of the Landlord's maintenance obligations under the Act, but a bathroom tap leak such as this does not amount to a serious breach of the Act or tenancy agreement. It appears that there was an attempt to repair this since there is now some sealer around the tap, and the Tenant did not give any evidence about this leak having any significant impact on her use and enjoyment of the rental unit or causing any safety issue. I do not find this to be a serious ongoing breach of the Act or the tenancy agreement.
85. The Tenant said that the bathroom window has a crack in it, and there is a "piece of glass" missing, which was been covered by duct tape. She said snow and rain can get in, so it has to be blocked off. She said that she told the Landlord about this in July 2021, but the Landlord has not attempted to fix it.
86. On cross-examination, the Tenant said that this bathroom window was broken when she moved into the rental unit in 2018. She was referred to a Google street view image of the exterior of the rental unit from April 2021 where there does not appear to be any damage to the window pane. The Tenant said the crack is there, but it cannot be seen and there was no duct tape on the window yet.
87. Regardless of when the window was broken, it is the Landlord's responsibility to repair it. The Tenant is only responsible for the repair if it was caused by the willful or negligent conduct of her or someone living with or visiting her. The Tenant said she did not know how it was broken, but that it was broken when she moved in, and the Landlord presented no evidence about how it was broken.
88. This may be a breach of the Act, and duct tape on the window may be unsightly, but there was no evidence before me that this issue is presently having a significant impact on the Tenant's use or enjoyment of the rental unit, or is causing any safety issue. I do not find this to be a serious ongoing breach of the Act or the tenancy agreement.
89. The Tenant also said the railing for the stairs from the main level up to the rental unit in the residential complex is not secure and the screws are coming out at the top. She said she told CG about this two days ago, and also "in September". On cross-examination, she said she did not know if CG had checked the railing after she was told about it.

90. The Landlord said he was not aware of this issue until it was raised at the hearing. When I asked the Tenant for a list of the issues she intended to raise under clause 83(3)(a) at the end of the July 27, 2023 hearing, this was not identified as an issue. I accept the Landlord's evidence that he was not previously aware of this issue. Once being made aware of this issue, the Landlord must have an opportunity to address the issue in a timely and effective manner before it could be considered a serious breach of the Act or tenancy agreement. I do not find this to be a serious ongoing breach of the Act or the tenancy agreement as of the hearing date.
91. The Tenant also said that the fridge in the rental unit is not working properly. She said it leaks and she has to empty water from the bottom of it on a daily basis. She presented a video that was taken on June 7, 2023 showing water at the bottom of the fridge. She said she complained about this to the Landlord in June 2023 but there has been no attempt to repair it and the issue is ongoing.
92. On cross-examination, the Tenant said the fridge does still work and that it keeps food cold. When asked if there was water at the bottom of the fridge when CG attended the unit two days before the hearing, the Tenant said that it was "pretty full" at the time. The Tenant was then referred to a photo of the fridge taken by CG at the time. The Tenant said there is water in the photo. There does not appear to be any significant amount of water at the bottom of the fridge in the photo.
93. There was no evidence about where water may be leaking from or why, but given that the fridge is operational and serves its function of keeping food cold, I do not find this to be a *serious* breach of the Act.
94. The Tenant also said there are no screens in the house, except for one that she bought herself. On cross-examination, the Tenant said there were never screens in the rental unit, except for two ripped ones.
95. This may be a breach of the Landlord's maintenance obligations under section 20 of the Act, though there was no reference by the Tenant to any local by-law that may require screens. I do not, however, find missing screens to be a serious breach of the Act in this case. There was no evidence about any significant impact on the Tenant's use or enjoyment of the rental unit or of this creating any safety issue.
96. On cross-examination, the Tenant said there are still some items stored on the roof, including the old stove, patio furniture, and plants. While this may be a breach of the Act and/or the tenancy agreement, it is not particularly relevant to the issues before me, because there is no evidence to establish that this seriously impairs any person's safety, or is willful conduct that is causing damage to the residential complex.
97. The Tenant also confirmed that the lease states that she cannot use the rooftop, and that the Landlord has not given her written or verbal permission to do so. She admitted to using the roof and allowing her dog out to get some air. She admitted the dog has defecated on the roof but said she promptly cleaned it. She said any odour is not from her dog. Regardless, the dog defecating on the roof does not seriously impair any person's safety, and there was no clear, convincing, and cogent evidence that it has caused damage to the rental unit or residential complex.

98. The Tenant confirmed she did not pay the invoice issued by the Fire Department, and that she stopped paying rent in March 2023 because of some maintenance issues. The rent arrears are the subject of a separate application brought by the Landlord.
99. The Tenant said that if her tenancy is terminated, she would need a few months to find another place to live, but it is difficult on a fixed income. She said she should not be evicted, and that she is willing to pay for the Fire Department invoice and for the window she broke. She said she does not think she should have to pay the whole invoice for the door, because it was already damaged.
100. I note that there was not evidence or allegation that the Tenant has had a fire on the roof since October 6, 2022, or that she or anyone else living with or visiting her has willfully damaged the rental unit or residential complex since May 26, 2022.
101. The Landlord said the tenancy is not viable, the Tenant has kicked in the door, broken a window, and had two rooftop fires. She has used the rooftop consistently when not permitted to, and has engaged in consistent destructive behaviour. He said she should also have to pay for the filing fee, the Fire Department invoice, and for the repair of the door and the window she broke (see below regarding compensation).
102. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. This is primarily because the conduct set out in the N7 notice that was proven has not been repeated. I find that the Tenant ought to be given a chance to salvage her tenancy.

Compensation for Damage

103. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex willfully or negligently caused undue damage to the rental unit or residential complex.
104. For the reasons outlined above, I find that the Tenant and AP willfully damaged the entry door to the residential complex that leads to the rental unit. BM's quote to replace this door is for \$1,465.00 plus HST, for a total of \$1,655.45. I accept that this is a reasonable cost that the Landlord has incurred or will incur to replace the damaged door, which could not be repaired.
105. For the reasons outlined above, I find that one window in the rental unit was damaged by the Tenant's willful or negligent conduct. The Tenant admitted to accidentally breaking the window when moving the stove. To be entitled to recover the reasonable costs incurred to repair or replace the broken window, the Landlord must provide clear, convincing, and cogent evidence that the Tenant caused the damage by her willful or negligent conduct, but evidence of what the reasonable costs are is also required.
106. The N7 notice said the estimated cost to repair the broken window was \$300.00, and CG said that another similar window in the rental unit was recently replaced at a cost of about \$200.00-\$400.00, but there was no invoice, estimate, quotation, or other documentary evidence to establish the precise cost of repair.

107. The Landlord has not proven the reasonable costs that the Landlord has incurred or will incur as a result of the damage to the window.

Damage for Interference

108. When the Tenant and AP had fires on the roof of the residential complex on September 10 and October 6, 2022, they were substantially interfering with the Landlord's reasonable enjoyment of the residential complex, and also with the Landlord's lawful rights, privileges, and interests.

109. Because of the Tenant's conduct, the Landlord was issued an invoice by the Brantford Fire Department (DOC-1308977). The total of the invoice, including HST, is \$576.18. This is a reasonable out-of-pocket expense the Landlord incurred as a result of the Tenant's substantial interference with the Landlord's reasonable enjoyment and lawful rights, privileges, and interests. The Landlord is entitled to recovery of this amount pursuant to section 88.1 of the Act.

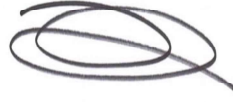
Filing Fee

110. 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 tenancy between the Landlord and the Tenant continues if the Tenant meets the conditions set out below.
2. For a period of 12 months from the date of the issuance of this order:
 - a. The Tenant shall not have a fire on the roof of the residential complex, and shall ensure that no person living with or visiting her has a fire on the roof of the residential complex; and
 - b. The Tenant shall not willfully cause undue damage to the rental unit or residential complex, and shall ensure that no person living with or visiting her willfully damages the rental unit or residential complex.
3. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenant. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
4. The Tenant shall pay to the Landlord \$1,655.45, which represents the reasonable costs of repairing/replacing the damaged door.
5. The Tenant shall also pay the Landlord \$576.18, which represents the reasonable out-of-pocket expenses that the Landlord incurred as a result of the Tenant substantially interfering with the Landlord's reasonable enjoyment of the residential complex and with his lawful rights, privileges, and interests.

6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$2,417.63.
8. If the Tenant does not pay the Landlord the full amount owing on or before January 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from January 21, 2024 at 7.00% annually on the balance outstanding.



January 9, 2024
Date Issued

Mark Melchers
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.