



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

**Citation:** Banerjee v Farah, 2022 ONLTB 10657

**Date:** 2022-11-07

**File Number:** LTB-L-000951-22

**In the matter of:** BSMT - APPT, 5277 LONGHOUSE CRES  
MISSISSAUGA ON L5R3S4

**Between:** Indrani Banerjee Landlord

**And**

Abdirashid Salad Farah, Walid Farah Tenants

2022 ONLTB 10657 (CanLII)

Indrani Banerjee (the 'Landlord') applied for an order to terminate the tenancy and evict Abdirashid Salad Farah, Walid Farah (the 'Tenants') because:

- the Tenants, 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 Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.

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

Indrani Banerjee (the 'Landlord') also applied for an order requiring Abdirashid Salad Farah, Walid Farah (the 'Tenants') 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.

Indrani Banerjee (the 'Landlord') also applied for an order requiring Abdirashid Salad Farah, Walid Farah (the 'Tenants') 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 July 12, 2022. The Landlord, the Landlord's Representative Sayed Azher a. Bukhari and the Landlord's witness, Banir Banerjee attended the hearing.

As of 10:00 a.m., the Tenants were 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:**

1. 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. Therefore, the tenancy is terminated on November 18, 2022.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On December 6, 2021 deemed delivered on December 11, 2021, the Landlord gave the Tenants an N5 notice of termination. The notice of termination contains the following allegations of damage occurring during between time period of January 2021 and November 2021:
  - Kitchen cabinets damaged and broken parts of the cabinet are missing
  - the entrance shutter door of the rented premises is substantially damaged
  - The door of the washroom of the rented premises is missing.
  - the fridge provided to the rented premises is also damaged
  - The stove-hood provided in the kitchen of the rented premises. was substantially damaged and broken. It is found hanging with ropes over the stove, which is itself a serious fire hazard to everyone living on the premises, as well as for the adjacent” properties.
  - The stove-hood provided in the kitchen of the rented is also damaged
  - The cabinet of the bedroom of the rented premises is damaged and its cover is missing.
  - The frame of the west side window of the kitchen and living room of the rented premises is substantially damaged and some parts of the fame are missing.
  - The backyard of the rented premises was illegally used for time is not known. growing the marijuana, without any permission, licence, and authority of the required authorities.
  - All installed racks and cabinets in the washroom of the rented premises are broken and substantially damaged.
  - The door in between the kitchen and living room and bedroom rented premises is substantially damaged
  - The washer installed in the laundry room and provided for use of the rented premises is substantially damaged due to the burning of the motor of the washer for overloading and careless use

- Due to continuous smoke and smell of marijuana and other drugs coming on the upper floor from the rented premises, Neebir Banerjee, son of the landlord, who was also residing on the upper floor of the rented premises developed severe/ permanent bronchitis symptoms, and now living with medicines and is unable to completely participate in ordinary activities of life, like a normal person.

Activities commencing January 2021 and are ongoing:

- Due to continuous smoke of marijuana and other drugs Abir Banerjee, son of the landlord, who was also residing on the upper floor of the rented premises, developed severe allergic between January 2021 symptoms, having no options had to move to a rented place, and living away from his family.
- In addition to the use of drugs, daily physical fights between Mr. Abdirashid Salad Farah and Mr. Walid Farah or among their guests/visitors in the rented premises is a matter of a daily routine, which put the safety and security of the landlord and family of the landlord is in great danger. They don't feel safe and secure in their own home. Due to unprovoked threats from the respondents, yelling, screaming, and use of loud indecent language the landlord has also moved to another place for the safety and protection of her life and wellness.
- Frequent police raids at the rented premises also created an atmosphere of constant fear and harassment to the landlord and family of the landlord, having legitimate safety and security concerns regarding their lives, forced to live in constant fear and depression.

Landlord's uncontested evidence

4. The Tenants moved into the rental unit on September 5, 2019, at that time the rental unit was delivered for the possession of the Tenant in perfect condition, newly renovated and without any damages.
5. At the time that the Tenants moved in, the Landlord resided at the upper floor of the rental unit but had to move out due to alleged continuous smoke of drugs and marijuana rising to the upper floor from the rented unit and serious concerns of safety and security for her life. It was submitted that there were frequent physical fights between the tenants and among their visitors, frequent use of loud abusive language, yelling, screaming and police raids at the rental unit. Once the Landlord moved out to rental, her ex-husband moved into the upper floor of the rental unit to look after her two sons that also resided there.
6. Photographs of the rented premises, showing its condition on or about September 2019 and photos taken during an inspection of the rental unit in December 2021 were submitted on record. The photos are indicative of the deficiencies and damage as described in the N5 notice.

7. The Landlord submits that the damage is beyond any reasonable wear and tear and that it is evident that all the undue damage is clearly result of the willful or negligent conduct of the Tenants or their visitors.
8. Based on the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Tenants and the Tenant's guests have substantially interfered with Landlord's and other tenants' reasonable enjoyment of the residential unit and the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully or negligently caused damage to the premises.
9. The Tenants did not stop the conduct or activity within seven days after receiving the N5 notice of termination and the Tenants did not pay for the damages as outlined in the N5 notice. Therefore, the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (the "Act").

#### Daily compensation

10. The Tenant was required to pay the Landlord \$6,798.90 in daily compensation for use and occupation of the rental unit for the period from December 11, 2021 to July 12, 2022 less any amounts paid.
11. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
12. The Tenants are required to pay daily compensation of \$36.16 from July 13, 2022 to the date the Tenants move out, less any amounts paid.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.

#### Compensation for damages

15. The Tenant, another occupant of the rental unit or a person whom the Tenant permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. Specifically, the Landlord submitted a quote prepare by Greenway Inc. dated December 14, 2021 outlined the following items and attached costs:
  - 1) Replacement of basement front door shutter and lock @ \$1500
  - 2) Replacement of damaged kitchen/ living room cabinet and mirror covering @ \$900
  - 3) Replacement of damaged flooring of kitchen/ living room @ \$ 2000
  - 4) Replacement of damaged appliances including refrigerator, cooking range, dryer, washer, and stove hood @ \$6500
  - 5) Replacement of damaged frame and glass of kitchen cum living room window @ \$1150
  - 6) Replacement of damaged bedroom cabinet and mirror @ \$790
  - 7) Replacement of damaged doors of both bedroom and washroom @ \$2200
  - 8) Replacement of washroom's broken racks and cabinet @ 800
  - 9) Replacement of damaged and broken bathtub @ \$1100
  - 10) Replacement of broken tiles of washroom walls @ \$900

- 11) Repair / maintenance of drywalling damaged at numerous places @2100
- 12) Replacement of broken patio tiles in front basement main door @ \$1900

*Note: - Total cost from item 1 to 12 is \$21,840 + HST. - Any extra work in addition to the above quote will be charged separately*

- 16. While the Landlord submitted into evidence a quote for \$21,840 + HST, the N5 notice served upon the Tenant specified \$20,000.00, as such the Landlord's claim for repair of the damage and replacement of property that was damaged and cannot be repaired will be limited to that amount.
- 17. The Landlord did not provide sufficient evidence to demonstrate that all the appliances were damaged due to wilful or negligent undue damage. While it was submitted that the unit was newly renovated, there was no evidence submitted to suggest the unit was equipped with new appliances at the time the Tenants moved in. Furthermore, the only appliances that were noted as broken by wilful and negligent actions of the Tenants on the N5 notice was the fridge, wash machine, and stove range hood. As such I am able to consider \$1,000.00 towards the repair or replacement of these appliances.
- 18. Based on the evidence before the Board, I find that the Tenants have wilfully or negligently caused undue damage to the rental unit and the Landlord will incur costs of \$18,464.20 inclusive of HST to repair the damage and replace the damaged property.

#### Compensation for substantial interference

- 19. The Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex substantially interfered with the reasonable enjoyment of the residential complex by the Landlord or another lawful right, privilege or interest of the Landlord. The Landlord submitted that the attitude and behaviors of the Tenants are unacceptable, having greatly impacted her reasonable and peaceful enjoyment of the property and forcing her and one of her sons to finally move. Her ex-husband and son continue to be impacted on a daily basis, they are subject to sounds of fighting and shouting, and people coming and going out of the rental unit at all hours of the night. Her son having developed breathing problems from the alleged marijuana odours arising from the basement and requiring to be treated medically.
- 20. The Landlord by having to move away from the rental unit has incurred reasonable out-of-pocket expenses, in her application she claims \$1,000.00. These expenses were incurred as a result of the substantial interference.
- 21. Based on the evidence before the Board, having found on a balance of probabilities that the Tenants have interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant, the Landlord will be entitled to compensation as claimed.

#### Section 83 considerations

- 22. 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 be unfair to grant

relief from eviction pursuant to subsection 83(1) of the Act. The Tenant did not attend the hearing to present any evidence or submissions in support of granting relief from eviction.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before November 18, 2022.
2. If the unit is not vacated on or before November 18, 2022, then starting November 19, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after November 19, 2022.
4. The Tenant shall pay to the Landlord \$6,798.90, which represents compensation for the use of the unit from December 11, 2021 to July 12, 2022, less any amounts paid to the Landlord.
5. The Tenant shall also pay the Landlord compensation of \$36.16 per day for the use of the unit starting July 13, 2022 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$18,464.20, which represents the reasonable costs of repairing the damage and replacing the damaged property.
7. The Tenant shall pay to the Landlord \$1,000.00, which represents the reasonable out-of-pocket expenses the Landlord has incurred as a result of the substantial interference.
8. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
9. The total amount the Tenant owes the Landlord is \$26,449.10.
10. If the Tenant does not pay the Landlord the full amount owing on or before November 18, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 19, 2022 at 4.00% annually on the balance outstanding.

**November 7, 2022**  
**Date Issued**

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 Alicia Johnson  
 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on May 12, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.