



Order under Sections 9(2) and 69  
**Residential Tenancies Act, 2006**

**File Number:** SWL-38901-19  
SWL-39443-19

**In the matter of:** 1249 QUEENS BOULEVARD  
KITCHENER ON N2M1C6

**Between:** M.H. Janzen Real Estate Brokerage Landlord

**and**

Hinda Hassan Tenants  
Willie Mohhamed

M.H. Janzen Real Estate Brokerage (the 'Landlord') applied for an order to terminate the tenancy and evict Willie Mohhamed and Hinda Hassan (the 'Tenants') because they, another occupant of the rental unit or someone they permitted in the residential complex have wilfully or negligently caused undue damage to the premises and because they, another occupant of the rental unit or someone they permitted in the residential complex have substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord has also applied for an order requiring the Tenants to compensate the Landlord for the damage. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

The Landlord also applied for an order to determine whether the *Residential Tenancies Act, 2006* (the 'Act') applies.

This application was heard in Kitchener on February 25, 2020.

The Landlord's property manager, Marek Jauzen, the Landlord's legal representative, Julian Shumka, the first-named Tenant and the Tenants' legal representative, Shawn Harvey, attended the hearing.

**Preliminary Issues:**

a) The Application for Wilful or Negligent Damage

1. There is no dispute between the parties that, in October 2019, a large pickup truck hauling a trailer drove into the side of the rental unit causing extensive damage to the walls and structure of the house. There is also no dispute that the vehicle was driven by a third party who has no affiliation with either the Landlord or the Tenants.

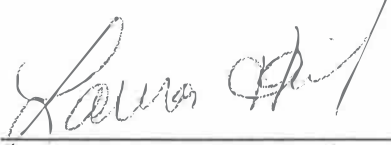
2. As the Tenants' were not to blame for the driver of the vehicle accidentally driving into the side of the rental unit, the parties agreed that the Tenants did not wilfully or negligently caused damage to the rental unit. For these reasons, this portion of the Landlord's application is dismissed.
- b) The Frustrated Contracts Act
3. At the hearing, the Landlord's legal representative made oral submissions regarding whether the *Frustrated Contracts Act*, R.S.O. 1990 applies to this situation in light of section 19 of the *Residential Tenancies Act, 2006* (the 'Act') which says: "The doctrine of frustration of contract and the *Frustrated Contracts Act* apply with respect to tenancy agreements."
  4. As I explained at the hearing, this section means that the doctrine of frustration applies when a contract becomes impossible to perform. In the residential tenancy context, what this means is that when a residential complex cannot be physically lived in anymore because it has been condemned, the tenancy has come to an end by operation of law. An example of this occurs when a rental unit has been declared permanently uninhabitable by a municipal by-law officer.
  5. At the hearing, the Landlord's legal representative presented three orders from the Landlord and Tenant Board in which the Adjudicators determined that the doctrine of frustration applied and the tenancies were terminated. For the reasons already stated at the hearing, I found that the circumstance before me are distinguishable from the circumstances in those 3 orders and, for those reasons, I am not bound by the Members' findings.
  6. Based on the oral reasons given at the hearing, I find that the *Frustrated Contracts Act* does not apply in this instance. The Landlord says that, even though extensive repairs are necessary, they will likely be completed within approximately 6 months. This means that the residential complex will be inhabitable within approximately 6 months and the residential tenancy agreement between the parties has not been permanently frustrated.
  7. This preliminary matter was set to be heard on March 17, 2020. As I gave an oral ruling at the hearing on February 25, 2020, regarding the application of the *Frustrated Contracts Act*, and in light of this written ruling, there is no need to hear this matter in person. The March 17<sup>th</sup> hearing is cancelled.
- c) The Application Regarding Substantial Interference
8. At the hearing, after finding that the contract between the parties was not frustrated, the parties began to discuss the real issues in dispute between them. It became clear that the Tenant wished to enter the rental unit to retrieve her belongings and the Landlord was eager to facilitate this entry so the repairs could begin. The problem is that the parties had been unable to reach a resolution regarding how to make this happen and this lack of resolution caused the Landlord to file the L2 application alleging that the Tenants were substantially interfering with his lawful right, privilege or interest.

9. In resolution of this portion of the Landlord's application, the parties discussed the Tenant's various safety concerns and the parties before the Board consented to the following order.

**On consent it is ordered that:**

1. The hearing for SWL-39443-19 scheduled for March 17, 2020, is cancelled.
2. The Landlord shall provide to the Tenants a key to the rental unit on or before February 28, 2020.
3. The Tenants shall pick up the key from the Landlord's Superintendent.
4. The Tenants will remove all of their belongings on or before March 18, 2020.
5. The Tenants shall return the rental unit key to the Landlord or the Landlord's superintendent on or before March 18, 2020.
6. The Landlord consents to waive the monthly rent until the completion of the renovations for the period starting October 18, 2019, until the renovations are complete.
7. This order resolves all issues between the parties regarding the A1 application and the L2 application.
8. The parties understand that the Tenants plan to raise issued contained in a T2/T6 application which is scheduled to be heard on April 22, 2020.

**March 30, 2020**  
**Date Issued**

  
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Laura Hartsliet  
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.