

LEGAL BULLETIN

Issue No. 45

Termination of a lease on grounds of family violence or sexual assault:
a right of protection for the victim — Gilbert c. Bernier, 2023 QCCQ 3840 ([CanLII](#))

Introduction

The signing of a lease agreement by two married spouses entails, for each one, the obligation to comply with the clauses of the lease until the agreed expiry date. However, in cases of family violence, article 1974.1 of the *Civil Code of Québec* (CCQ) allows the victim to apply to the Director of Criminal and Penal Prosecutions (DCPP) in order to obtain an attestation to terminate their lease.¹

This mechanism aims to protect vulnerable individuals by offering them a legal means of leaving a dwelling that is shared with a violent spouse without having to obtain the spouse's consent or exposing themselves to further violence. It is an essential safety measure that allows victims to put an end to cohabitation and, potentially, a situation of ongoing distress. The decision analyzed in this bulletin will shed light on the legal rules governing this attestation to terminate a lease.



Case Background

Ms. Bernier and Mr. Gilbert lived together from July 2018 to September 2020. During that period, they married and had a child. However, their relationship deteriorated, and on September 18, 2020, Ms. Bernier requested an attestation to terminate her lease from the Director of Criminal and Penal Prosecutions (DCPP) on the grounds of family violence.

In support of her application, she provided a copy of her lease agreement, which expired on June 30, 2022, as well as a letter from La Maison du Coeur pour les Femmes, proving that she had been receiving psychosocial support since September 2, 2020.

Ms. Bernier claimed to be a victim of family violence, particularly psychological abuse. She accused her husband of not helping her with childcare or household chores, of being controlling and intrusive, of monitoring her, and of isolating her from her family and friends. Due to the anxiety caused by this situation, she consulted a doctor, who, faced with the ineffectiveness of treatment, also raised the possibility of family violence.

Ms. Bernier then contacted SOS Violence Conjugale (Domestic Violence Helpline) and informed her family and friends of the situation. Faced with Mr. Gilbert's increasingly controlling behaviour, including acts of

¹ The article cited does not expressly mention the Director of Criminal and Penal Prosecutions (DCPP), but stipulates that the request must be submitted to a public official. The Ministère de la Justice grants this authority to the DCPP for the purpose of processing requests for an attestation to terminate a lease in cases of family violence [TRANSLATION] "due to its role and expertise in matters of family violence". Source: GOUVERNEMENT DU QUÉBEC, "Terminate your Lease as a Tenant in Situation of Sexual Violence, Spousal Violence or Violence towards a Child," online:< https://www.quebec.ca/en/housing-territory/renting/leases/terminate-lease-domestic-violence-sexual-assault?utm_source=chatgpt.com%3E paragraph 103 of the decision:< <https://canlii.ca/t/jz21v>>.

jealousy, control, and dangerous driving (speeding) in the presence of their child, Ms. Bernier decided on September 20, 2020, to leave the family home without informing her spouse, for fear of his reaction.

Five days later, on September 25, 2020, she received the attestation to terminate her lease issued by the Director of Criminal and Penal Prosecutions (DCPP). However, she initially chose not to use it. She helped Mr. Gilbert find a new place to live in addition to paying his share of the rent for more than two months. However, in view of his inaction, she decided in November 2020 to send the attestation to terminate her lease to the landlord in order to put an end to her contractual obligations.

Mr. Gilbert denied all of the allegations against him. He claimed that he had never been violent toward Ms. Bernier or their child. However, he acknowledged that he had a poor relationship with his wife's family, while denying that he wanted to distance her from them. He claimed to be the victim of defamatory statements that damaged his reputation and jeopardized his chances of finding another dwelling. In addition, he criticized the DCPP for not trying to obtain his version of events before issuing the attestation.

Mr. Gilbert then filed a lawsuit claiming \$15,000 in moral and reputational damages and \$5,000 in punitive damages against Ms. Bernier and the DCPP.

He also argued that Ms. Bernier should have gone to the Tribunal administratif du logement (TAL) to have the lease terminated, rather than going through the DCPP. But would he win his case?

Analysis of the Court's decision

In ruling on the dispute, the judge structured his reasoning around two questions. The first concerned the allegations that Ms. Bernier had invoked false grounds with the DCPP in relation to Mr. Gilbert's conduct in order to obtain an attestation to terminate

the lease. The second concerned the fault that the DCPP had allegedly committed in the process of issuing the attestation.

A. Use of false grounds by Ms. Bernier in order to obtain an attestation to terminate her lease from the DCPP

Mr. Gilbert claimed that Ms. Bernier had used false grounds to obtain the attestation. He claimed never to have been violent toward her and never to have endangered her safety or that of their child. He considered Ms. Gilbert's statements to be "defamatory" and "contrary to reality".

In response to these allegations, the Court recognized the right of every person to the protection of their reputation, honour, dignity, and privacy. This right is guaranteed by various texts,² including the *Charter of Human Rights and Freedoms*.³ However, citing the decision in *Société Radio-Canada c. Radio Sept-Îles Inc.*, the Court specified that establishing liability for defamation requires [TRANSLATION] "a wrongful attack on the reputation" of another person manifested by "malicious intent to harm others". However, the analysis of the facts of the case, namely the statements made by Ms. Bernier and the allegations made by Mr. Gilbert, showed that there was insufficient evidence to establish that Ms. Bernier had committed any wrongdoing. Indeed, Mr. Gilbert did not provide sufficient evidence of malicious intent.

Furthermore, Ms. Bernier's attitude did not meet the criteria for harmful behaviour. She did not initially invoke the attestation of termination in order to free herself from her obligations, but rather sought to help Mr. Gilbert find other accommodations. Although she left the dwelling, she continued to help Mr. Gilbert search for accommodations. Furthermore, she did not hesitate to pay her share of the rent even though she no longer lived with him. Mr. Gilbert's request regarding Ms. Bernier's

² The three pieces of legislation are: Charter of Human Rights and Freedoms, RLRQ c C-12 ; RLRQ, c. CCQ-1991; Société Radio-Canada c. Radio Sept-Îles inc., [1994] RJQ 181; reference to the online decision: Société Radio-Canada c. Radio Sept-Îles inc., 1994 CanLII 5883 (QCCA), <<https://canlii.ca/t/1pb4v>>, consulted online 2025-09-09.

³ Charter of Human Rights and Freedoms, RLRQ c C-12.

defamation charge was therefore unsuccessful. Mr. Gilbert's request regarding Ms. Bernier's defamation charge was therefore unsuccessful.

What about the alleged fault of the DCPD?

B. Absence of fault on the part of the DCPD in issuing the attestation to terminate Ms. Bernier's lease

Based on article 1457.1 of the *Civil Code of Québec*,⁴ Mr. Gilbert argued that the Director of Criminal and Penal Prosecutions (DCPD) had committed a fault by issuing the attestation to terminate the lease to Ms. Bernier. In his view, this fault was based, in particular, on an overly broad interpretation of the concept of violence, as well as on the absence of threats on his part toward Ms. Bernier or their child.

The Court rejected this argument. It found that the understanding of the word violence, as retained by the DCPD under the former version of article 1974.1 CCQ, was not erroneous. Although this provision does not explicitly mention family violence, it refers to violence by a spouse, which includes psychological abuse on the part of one spouse against the other.

With regard to Mr. Gilbert's second claim, namely non-compliance with the *Act respecting administrative justice*⁵ (AAJ), the Court concluded that the attestation issued to Ms. Bernier in order to terminate her lease did not constitute an administrative decision unfavorable to Mr. Gilbert. It did not infringe on his rights as a tenant or his enjoyment of the dwelling, and had legal effect only with respect to Ms. Bernier.

Thus, the conditions for applying sections 1 and 2 of the AAJ were not met. The DCPD therefore had no obligation to inform Mr. Gilbert or to enable him to submit observations in connection with the issuing of the attestation. The Court added that it would be inappropriate and even dangerous to impose on the DCPD an obligation to inform the alleged perpetrator of family violence that the victim was planning to leave the home. Such a requirement would compromise the victim's safety.

Consequently, no fault could be attributed to the DCPD and, therefore, neither the DCPD nor Ms. Bernier could be held liable. Mr. Gilbert's claim was therefore dismissed, with legal costs.

Conclusion

Gilbert c. Bernier clearly illustrates the importance of the attestation to terminate a lease in Quebec's system for protecting victims of family violence, particularly psychological abuse. Although this form of violence is not physical, it constitutes a serious threat to mental well-being and may justify an urgent departure from the marital home.

In this situation, the attestation enables the victim to terminate a lease without prior notice, thereby avoiding prolonged and potentially stressful cohabitation. In addition, the fact that

the Director of Criminal and Penal Prosecutions (DCPD) can issue this attestation without informing the perpetrator of the violence reinforces the security of the process, as it ensures a discreet and protected exit. The attestation to terminate a lease shows that the legislator is seeking to reconcile contractual rigour with the need to protect victims of family violence. However, the question of how this mechanism fits in with other support measures, particularly in terms of rehousing and assistance, in order to ensure truly integrated protection remains open.

⁴ Former version of article 1457.1 CCQ: 1974.1 : "A lessee may resiliate the current lease if, because of the violent behaviour of a spouse or former spouse or because of a sexual aggression, even by a third party, the safety of the lessee or of a child living with the lessee is threatened. . . . (emphasis added).

Current version of article 1457.1 CCQ, which came into effect in 2022 : "A lessee may resiliate the current lease if, because of sexual violence, spousal violence or violence towards a child living in the dwelling covered by the lease, the safety of the lessee or of the child is threatened." (emphasis and bolding added).

⁵ Act respecting administrative justice , RLRQ, c. J-3.

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