

Superior Court of Justice
Cour supérieure de justice

Endorsement Record/Order of the Court
Fiche d'inscription/Ordonnance judiciaire



BARRIE

Small Claims Court / Cour des petites créances de

SC-20-805

Claim No. / N° de la demande

**75 MULCASTER STREET
BARRIE, ON L4M 3P2**

Address / Adresse

705-739-6111

Phone number / Numéro de téléphone

BETWEEN / ENTRE

PARASTOO MORADIAN-NEJAD

Plaintiff(s) / Demandeur(s)/demanderesse(s)

and / et

GRAHAM CAMPBELL; HAILEY ROBERTS

Defendant(s) / Défendeur(s)/défenderesse(s)

Representative of the plaintiff(s): **N. Fazzari, licensed paralegal**

Représentant du demandeur :

Representative of the defendant(s):

Représentant du défendeur :

Event type: **ASSESSMENT HEARING**

Type d'affaire :

On **JANUARY 12**, 20 **22**, a hearing was held in the above matter and the following order was made:
Le **JANUARY 12**, 20 **22**, une audience a eu lieu concernant l'affaire susmentionnée, et l'ordonnance suivante a été rendue :

See Attached Schedule "A".

D.J. L. Carr

Signature of judge / Signature du juge

Schedule "A"
to the Endorsement of Deputy Judge Carr dated January 12, 2022

The Plaintiff requested an assessment hearing for damages, in the amount of \$35,000.00, against both defendants, as set out in the Plaintiff's Claim issued on November 20, 2021. The Plaintiff's Claim was served on the Defendant, Graham Robert Campbell, on August 31, 2020, by alternative service and served on the Defendant, Hailey Roberts on August 17, 2021, in accordance with the Order for Substituted Service of Deputy Judge O'Connor dated August 16, 2021, as per the Affidavits of Service filed. Both Defendants have been noted in default.

The Plaintiff, Parastoo Moradian-Nejad, gave oral evidence. The Plaintiff and Defendant, Graham Campbell, entered into a lease agreement to rent the property municipally known as 26 Glen Hill, Barrie ("the property"). The lease explicitly stated that the property was not to be occupied by anyone other than Graham Campbell and the property shall not be sublet. The Defendant, Graham Campbell, took possession of the property on September 14, 2019.

On November 14, 2019, the Defendant, Graham Campbell, contacted the Plaintiff to break the lease. The Plaintiff agreed to terminate the lease. The plaintiff met the Defendant, Graham Campbell, at a gas station that same day on November 14, 2019. The Plaintiff could see the Defendant's truck was loaded with belongings so she believed he had moved out. During that meeting at the gas station, the parties signed an N11 form to return vacant possession back to the plaintiff on November 14, 2019. The defendant, Graham Campbell, attached a note to the N11 form indicating that the defendant, Hailey Roberts, had no entitlement to the property. Unknown to the Plaintiff at the time, Hailey Roberts, was occupying the property (contrary to the lease agreement with Graham Campbell) and the handwritten note of Graham Campbell is consistent with the fact that he was aware that Hailey Roberts was occupying the property. Graham Campbell only returned one key to the plaintiff and stated that the defendant, Hailey Roberts, had the other key. As a result, Mr. Campbell did not return both keys and did not deliver vacant possession of the property.

The plaintiff contacted the defendant, Hailey Roberts, giving her 24 hours to leave the property but she refused to leave. On November 15, 2022, the plaintiff attended the property with the police to remove Hailey Roberts. At that time, the police discovered 4 people living upstairs and 1 person living in the basement. It is believed that the people upstairs were renting rooms, similar to a boarding house. It was further discovered that Hailey Roberts and Graham Campbell, had sublet the basement to another person for \$1,100/month, contrary to the lease agreement between the plaintiff and Graham Campbell. The plaintiff contacted Graham Campbell about all of the occupants in the house, at which time he admitted that he was aware of the occupants. Graham Campbell also stated that he did not sign the original lease but rather his signature was forged by Hailey Roberts.

The police instructed the plaintiff to bring an application before the Landlord Tenant

Board ("LTB") to remove Hailey Roberts and the basement tenant from the property. A hearing was scheduled on March 6, 2020 and the plaintiff attended with a police officer, on which she had served a summons. At that time, the plaintiff discovered that the defendant, Hailey Roberts, had forged her signature on a letter to the LTB to adjourn the hearing. The LTB also noted in its subsequent Order that it believed Hailey Roberts had forged the plaintiff's signature. As a result, Hailey Roberts, caused further delays leading to more losses suffered by the plaintiff.

The hearing returned before the LTB as an urgent matter on May 8, 2020. The parties attended by conference call. The decision of the LTB was released on May 13, 2020. The LTB held that the defendant, Hailey Roberts, was a squatter and had no rights under the RTA. The basement tenant had already moved out.

The next day after the LTB decision, the plaintiff attended the property with the police. It is believed that Hailey Roberts had vacated the property during the evening hours of May 13, 2022, or earlier in the day on May 14, 2020. The plaintiff produced numerous good quality photographs of extensive garbage and extensive damage in almost every room, if not every room, of the house. In fact, the house was in such horrible condition, that more than one cleaning company refused to clean the house.

It is also noted that the property was leased as fully furnished. All of the furniture was removed/stolen, including tvs ripped off the walls. The plaintiff produced pictures of the damage and stolen furniture/tvs. However, it was not necessary to hear evidence about all of the stolen furniture since this loss exceeded the small claims court limit of \$35,000.

The Plaintiff produced a number of invoices, amounting to \$11,410.23, to repair all of the damage shown in the pictures. These invoices included:

- \$300 for repairs to windows and patio door
- \$400 for repairs to shower door
- \$935 for repairs to hot tub
- \$1,500.00 for repairs to basement door, master window, and laundry room
- \$1,495.23 for plumbing repairs
- \$6,780.00 for drywall repairs and painting

Further, the lease with Graham Campbell, clearly indicated that the tenant was responsible for the electricity, gas and water bills, but Graham Campbell never transferred the utilities into his own name. As a result, the plaintiff paid these utilities and produced the supporting invoices for the relevant period from September 15, 2019 up to the time of vacant possession in May 2020. The plaintiff paid utilities totalling \$3,889.55, as follows:

- \$1,957.85 paid to Alectra
- \$1,322.41 paid to Enbridge
- \$609.29 paid for water

The damage and garbage in the house was extensive. I have no doubt that it took time to clean and repair the home. The house was not leased again until September 15, 2020, for \$2,700.00 per month. The Plaintiff did not receive any rent or compensation from November 15, 2019 up to September 15, 2020, being a total of 10 months. Based on the original lease with Graham Campbell, the Plaintiff ought to have received \$2,650.00 per month which amounts to \$26,500.00 in lost rent.

The total amount of the invoices to clean and repair the home, in the amount of \$11,410.23, plus utilities paid in the amount of \$3,889.55 for the relevant time period, plus the lost rent in the amount of \$26,500.00, total \$41,799.78. I would have awarded the full amount but this exceeds the small claims court jurisdiction and judgment will be issued for \$35,000.00. It is noted that the plaintiff suffered significantly more loss with respect to the stolen furniture and tvs.

Further, judgment is granted against both defendants. The Defendant, Graham Campbell, failed to deliver vacant possession of the property to the Plaintiff and failed to return both keys. Graham Campbell provided Hailey Roberts with the key to the property permitting her to occupy the property. It is further noted that Graham Campbell was aware that other people were occupying the property, given the handwritten note attached to the N11 form. With respect to the Defendant, Hailey Roberts, she refused to leave the property notwithstanding having unlawful possession of the property from November 15, 2019 to May 2020 and is therefore liable for the loss of rent, utilities and damage to the property.

With respect to costs, the plaintiff is awarded \$732.00 for disbursements, broken down as \$102 to file the Plaintiff's Claim, \$100 for preparation of the Plaintiff's Claim, \$120 to file the motion for substituted service, \$120 to serve two defendants and \$290 to schedule the assessment hearing.

Further, the plaintiff seeks representation fees in the amount of 15% of the amount claimed, being \$5,250.00. Rule 19.04, provides discretion to award a reasonable representation fee at an assessment hearing while section 29 of the Courts of Justice Act limits the amount of costs to 15% of the amount claimed, unless there is unreasonable behaviour of the other party.

It is only in rare cases that an assessment hearing could attract an award of 15% for costs. But I believe this is one of those rare cases. Given the horrendous condition of the property, I have no doubt that the plaintiff spent an extensive amount of her own time and expense to bring the property back to a reasonable condition to be leased again. Given the plaintiff's time and expense, in addition to legal fees, and given the actual losses of the Plaintiff are much greater than awarded, I am granting costs payable to the plaintiff for the full 15% of the amount claimed, being \$5,250.00.

On hearing the oral evidence of the Plaintiff, and on reviewing the Plaintiff's Claim, documents attached thereto and documents filed in support of the assessment hearing,

it is hereby ordered that:

- 1) Judgment be issued to the Plaintiff against both defendants in the amount of \$35,000.00,
- 2) pre-judgment interest is awarded from May 14, 2020, to the date hereof, in accordance with the Courts of Justice Act;
- 3) post judgment interest is awarded in accordance with the Courts of Justice Act; and
- 4) costs of this action fixed at \$5,982.00, broken down as \$732.00 for disbursements and \$5,250.00, being 15% of the amount claimed.

D.J. L. Carr

Deputy Judge L. Carr

Order under Section 31
Residential Tenancies Act, 2006

File Number: CET-94284-20

In the matter of: 26 GLENHILL DRIVE
BARRIE ON L4N5X6

Between: Hailey Roberts Tenant

and

Parastoo Moradian Landlord

Hailey Roberts (the 'Tenant') applied for an order determining that Parastoo Moradian (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with the Tenant and withheld or deliberately interfered with the reasonable supply of a vital service that the Landlord is obligated to supply under the tenancy agreement.

A Case Management Hearing ("CMH") was held by telephone on June 15, 2020.

Only the Landlord called to participate in the CMH. I waited 15 minutes before proceeding with the hearing. Neither the Tenant, nor a representative for the Tenant called to participate in the CMH.

Determinations:

1. The Notice of Hearing states that if the Tenant does not attend the CMH, the LTB may dismiss the application. I am satisfied that the Tenant had proper notice of the CMH.
2. Since the Tenant did not attend the hearing to support their application, I find that this application has been abandoned.

It is ordered that:

The Tenant's application is dismissed.

June 16, 2020
Date Issued


Nancy Fahlgren
Hearing Officer, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.