



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

Citation: Mujiri v Grossman, 2023 ONLTB 53852

Date: 2023-12-05

File Number: LTB-L-037073-22

In the matter of: 70 OAKMEADOW DR
BRAMPTON ON L7A2M1

Between: Tsitsi Mujiri

And

Miranda Grossman, Carey Downey and
Chanel Grossman

I hereby certify this is a
true copy of an Order dated
DEC 5, 2023
Margo de la Harpe
Landlord and Tenant Board

Landlord

Tenants

2023 ONLTB 53852 (CanLI)

Tsitsi Mujiri (the 'Landlord') applied for an order to terminate the tenancy and evict Miranda Grossman, Carey Downey and Chanel Grossman (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owe (L1 application); 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;
- the Tenants have been persistently late in paying the Tenants' rent;
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 application).

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 the Tenants to pay:

- the Landlord's reasonable out-of-pocket expenses that are the result of the Tenants' failure to pay utility costs they were required to pay under the terms of the tenancy agreement, and
- 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.

This application was heard by videoconference on August 18, 2023, previously adjourned at the request of the Tenant Miranda Grossman on June 29, 2023. The parties set the return date of August 18, 2023 on consent at that time.

The Landlord, the Landlord's Agent Tinashe Mujiri (the Landlord's son), and the Tenant Miranda Grossman attended the hearing on June 29, 2023. The Tenant indicated that the other 2 named Tenants no longer resided in the rental unit.

Only the Landlord and the Landlord's Agent Tinashe Mujiri attended the hearing on August 18, 2023.

As of 11:14 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. I am satisfied that the Tenants were aware of the hearing, as the date was agreed at the previous hearing, and the Notice of Adjourned Hearing was sent by email on August 12, 2023 to the Tenant Miranda Grossman. There was no indication in the Board's file that the email was undeliverable. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. The Landlord and the Tenant Miranda Grossman entered an agreement on August 1, 2022 to terminate the tenancy as of September 1, 2022. An *ex parte* application was brought by the Landlord to enforce the agreement, and by order dated September 29, 2022 (LTB-L-048916-22) the tenancy was terminated effective October 10, 2022.
2. The Tenant vacated the rental unit effective August 31, 2022. The grounds of the applications pertaining to eviction are moot and therefore only the monetary claims will be considered.

Board's monetary jurisdiction

3. The Landlord testified that new estimates and invoices for repair of damage were received after the application was filed, and that the actual expenses incurred by the Landlord for this damage totalled \$38,884.00.
4. The Board's monetary jurisdiction limit is \$35,000.00. The Landlord was advised of the Board's monetary jurisdiction and that, should the monetary claims be successful, the total award including the arrears of rent cannot exceed \$35,000.00.
5. The Landlord confirmed that they wished to proceed with the hearing and understood that pursuant to section 207(3) of the *Residential Tenancies Act, 2006* (the "Act"), all rights of the party in excess of the Board's monetary jurisdiction are extinguished upon issuance of the Board order.

L1 application

6. The rental unit is a single-family home.
7. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
8. The Tenants were in possession of the rental unit on the date the application was filed.
9. The Tenants vacated the rental unit on August 31, 2022. Rent arrears are calculated up to the date the Tenants vacated the unit.
10. The lawful rent is \$2,600.00. It was due on the 1st day of each month.

11. The Tenants have not made any payments since the application was filed.
12. The rent arrears owing to August 31, 2022 are \$13,000.00.
13. The Landlord collected a rent deposit of \$2,600.00 from the Tenants and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy terminated.
14. Interest on the rent deposit, in the amount of \$31.29 is owing to the Tenants for the period from August 31, 2021 to August 31, 2022.

L2 application

15. As explained below, the Landlord has proven on a balance of probabilities part of the claim for compensation in the application. Therefore, the Tenants shall pay to the Landlord \$2,646.68 in compensation for reasonable out-of-pocket expenses that the Landlord has or will incur for unpaid utilities and for undue damage wilfully or negligently caused by the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex.

Compensation for unpaid utilities

16. The Landlord submitted a copy of a water bill from the Region of Peel dated June 14, 2022 into evidence. It shows an unpaid balance of \$796.68. While there was no tenancy agreement entered into evidence, it was the Landlord's evidence that the Tenants were responsible for payment of the water bill and did not pay it.
17. Based on this uncontradicted evidence, I find that the Tenants failed to pay water costs that they were required to pay under the terms of the tenancy agreement and that the Landlord has incurred reasonable out-of-pocket expenses of \$796.68 as a result of the Tenants' failure to pay water costs.

Compensation for damages

18. The application claims that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. The damage claim totals \$7,365.33 for:
 - Pest control (\$567.83),
 - Main entrance railing (\$3,000.00),
 - Smoke smell (\$847.50),
 - Staircase (\$2,600.00),
 - Wall repair (\$350.00)
19. At the hearing, the Landlord stated that further damage was found after the application was filed and submitted an invoice from Ackel's Reno dated November 22, 2021 for \$38,884.00. It indicates on the second page that the work was paid for and completed on December 2, 2022. It shows expenses for:

- paint
- baseboard replacement
- wallpaper removal
- removal of a hallway chandelier and installation of a dome light
- mesh replacement for a screen door
- replacement of all flooring in the house
- replacement of 3 toilets (“stained and clogged”)
- replace tubs and vanity (“excessive water damage”)
- tile on floor damage
- carpet removal and installation on staircase, staircase handle replacement
- drywall removal/installation (water damage and holes in living room area)
- front porch broken rails

20. There is no cost breakdown for items on the invoice.

21. The Interim Order issued August 1, 2023 indicated that any additional disclosure was to be provided to the Board and to the other party on or before August 10, 2023, and if this was not done, the Member may refuse to accept the evidence or consider the issues not disclosed.

22. There is no evidence before me to indicate that the Tenants were served or otherwise put on notice of the further claims submitted by the Landlord. Although the Tenants chose not to attend the hearing, it would be unfair to allow the Landlord to adduce new evidence with respect to significant damage without the Tenants being able to know the case to be met and to decide whether or not to attend the hearing to defend the allegations.

23. The invoice from Ackel’s Reno appears to have been uploaded to the Tribunals Ontario portal on the day of the hearing August 18, 2023, which is not in compliance with the Interim Order. No evidence was led as to why this invoice for work completed in December 2022 could not have been submitted at an earlier date or prior to the first hearing date on June 29, 2023.

24. Therefore, for reasons of procedural fairness, only the claims on the L2 application will be considered as they are the only claims of which the Tenant was aware and had an opportunity to consider and address.

Pest control

25. The Landlord submitted the following invoices from Pestend Inc. into evidence and service inspection reports:

- June 3, 2020: 6 months of mouse extermination service (\$284.76)
- December 30, 2021: rodent interior and exterior setup (\$330.53)
- March 23, 2022: monthly exterior rodent maintenance program (\$79.10)

26. The service reports indicate that a dead rat was found in the garage and preventive traps were set. There is no evidence before me that the house was infested or that the Tenants were in any way responsible for the rodents.

27. Unfortunately, pest control is a necessity at any property, and I do not find based on the evidence before me, on a balance of probabilities, that the pest control expense incurred by the Landlord was the result of undue damage or wilful or negligent conduct by the Tenants, an Occupant, or someone that the Tenants permitted in the rental complex.

Main entrance railing

28. The Landlord's Agent testified that there was a long staircase in the front hall of the rental unit where 15 steps led to a landing, then 15 more to the second storey of the rental unit. His uncontested testimony was that there had been some sort of altercation on the stairs and that the top rail of the staircase had been shattered and needed to be replaced.

29. I have no specific evidence such as photographs showing the extent of the damage or cost to repair or replace this railing other than the Landlord's claim in the application for \$3,000.00. The Ackel's Reno invoice merely states: "staircase handle replacement."

30. Based on the Landlord's Agent's description of the staircase, this is a long wooden railing. I cannot find, however, based on a balance of probabilities, that the entire length of the railing was irreparably damaged due to an altercation. The Landlord has not proven the reasonable costs that the Landlord incurred as a result of the damage. I find, however, that \$1,500.00 is appropriate to compensate the Landlord for repair of this railing.

Smoke smell

31. The Landlord claims that the house smelled of tobacco and marijuana smoke. There is no tenancy agreement in evidence that would show that the rental unit was intended to be a non-smoking property.

32. The Landlord submitted an estimate into evidence from Inch By Inch Inspections dated March 29, 2022 for \$847.50 for Ozone shock treatment for smoke. This is during the time that the Tenants were still in possession of the rental unit, and no further evidence was submitted, including whether the treatment was done.

33. I have insufficient evidence to find, on a balance of probabilities, that this was an expense incurred by the Landlord, nor that it is an expense that results from undue damage which can be attributed to wilful or negligent conduct by the Tenants.

Staircase carpet

34. The Landlord's Agent testified that the carpet on the long staircase was worn and damaged and needed to be replaced. No evidence of the cost to do this was entered into evidence, but the application states that it is \$2,600.00.

35. The Landlord's evidence was that the rental unit was built in in 2004, and no evidence was led that the carpet had ever been replaced or about the condition of the carpet prior to the Tenants occupying the rental unit. There were no photographs of the carpet entered into evidence.

36. I find that the Landlord has not proved, on a balance of probabilities, that this was an expense which was incurred by the Landlord that was a result of undue damage as a result of wilful or negligent conduct of the Tenants.

Wall repair

37. The Landlord's Agent stated (and the renovation estimate specifically mentions) that there was significant damage to the drywall in the living room which is more than that which could be expected due to normal wear and tear. While I have no photographs or evidence as to the extent of the damage, the Landlord's assertion is uncontested. The estimate submitted is for \$350.00, which I do not find to be unreasonable.
38. I find that, on a balance of probabilities, it is more likely than not that there was undue damage to drywall which was wilfully or negligently caused by the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex and that the Landlord incurred the reasonable out-of-pocket expense of \$350.00 to repair the damage.

Analysis

39. The following are the relevant sections of the Act with respect to claims for damage to the rental unit:

34 The tenant is responsible for the repair of undue damage to the rental unit or residential complex caused by the wilful or negligent conduct of the tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant.

89 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay reasonable costs that the landlord has incurred or will incur for the repair of or, where repairing is not reasonable, the replacement of damaged property if,

- (a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant wilfully or negligently causes or caused undue damage to the rental unit or the residential complex ...

40. The Landlord's Agent stated that the rental unit was built in approximately 2004 and purchased in approximately 2015 for \$400,000.00. He stated that the Landlord sold the home in March 2023 for \$1,050,000.00.
41. It is apparent from the invoice from Ackel's Reno that in addition to repair of any ordinary wear and tear and repair of any undue damage to the rental unit, renovations were done to the house after the Tenants vacated, including many luxury upgrades.
42. While a landlord is entitled to be compensated under the Act for reasonable proven out-of-pocket expenses incurred as a result of undue damage which is the result of wilful or negligent actions of a tenant, a landlord is not entitled to ordinary expenses which would be incurred between tenants, nor is a landlord entitled to claim for upgrades to a rental unit which in this case, appear to have been done to increase the property value for sale.

43. Based on the evidence before me, I find that the Landlord has incurred reasonable out-of-pocket costs of \$1,850.00 to repair undue damage wilfully or negligently caused by the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex.

It is ordered that:

L1 application

1. The tenancy between the Landlord and the Tenants is terminated as of August 31, 2022, the date the Tenants moved out of the rental unit.
2. The Tenants shall pay to the Landlord \$10,368.71. This amount includes rent arrears owing up to the date the Tenants moved out of the rental unit. The rent deposit and interest the Landlord owes on the rent deposit is deducted from the amount owing by the Tenants. See Schedule 1 for the calculation of the amount owing.

L2 application

3. The Tenants shall pay to the Landlord \$796.68, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
4. The Tenants shall also pay to the Landlord \$1,850.00, which represents the reasonable costs of repairing the damage and/or replacing the damaged property.
5. The total amount the Tenants owe the Landlord is \$13,015.39.
6. If the Tenants do not pay the Landlord the full amount owing on or before December 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 17, 2023 at 7.00% annually on the balance outstanding.

December 5, 2023
Date Issued



Margo den Haan
Member, Landlord and Tenant Board

15 Grosvenor St, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Move Out Date	\$13,000.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$2,600.00
Less the amount of the interest on the last month's rent deposit	- \$31.29
Total amount owing to the Landlord	\$10,368.71

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