



**Order under Section 69 / 88.2 / 89  
Residential Tenancies Act, 2006**

**Citation:** Francis v Mayers, 2023 ONLTB 77128

**Date:** 2023-11-29

**File Number:** LTB-L-010175-23

**In the matter of:** 99 FOSTER CRES  
BRAMPTON ON L6V3M7

**Between:** Michelle Francis Landlord

**And**

Tinika Mayers

Tenant

Michelle Francis (the 'Landlord') applied for an order to terminate the tenancy and evict Tinika Mayers (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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

Michelle Francis (the 'Landlord') also applied for an order requiring Tinika Mayers (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement. The Landlord also seeks their 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 November 16, 2023.

Only the Landlord attended the hearing. The Tenant was 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 not proven on a balance of probabilities that they have compensated the Tenant one month's rent as required by s.48.1 of the *Residential Tenancies Act, 2006* (the 'Act'). Additionally, the Landlord has not proven on a balance of probabilities the claim for utilities or damage compensation in the application. Therefore, the entire application is dismissed.

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2. The Tenant was in possession of the rental unit on the date the application was filed.

***N12 Notice of Termination and Compensation under s.48.1***

3. On January 17, 2023, the Landlord gave the Tenant an N12 Notice of Termination (deemed served the same date) with the termination date of April 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for themselves, their spouse, and their children.
4. The Landlord testified that they purchased the property and that they had a previous L2 application (LTB-L-043135-22) based on an N12 Notice of Termination. LTB-L-043135-22 is a L2 application for purchaser's own use where the current Landlord in this application, Michelle Francis, was the purchaser and Sharie Campbell was the Landlord. That application was ultimately dismissed due to an error on the N12 Notice of Termination on January 17, 2023.
5. At this hearing, Ms. Francis testified that compensation for LTB-L-043135-22 was given to the Tenant even though that application was dismissed. Subsequently, she verbally told the Tenant, when she served the N12, that the previous compensation should be used for this application. There was no documentary evidence submitted to the Board surrounding any compensation paid to the Tenant at any time. In addition, on this L2 application, the Landlord indicated that compensation will be paid to the Tenant in the future which suggests that it had not been paid previously. The Landlord did not address this discrepancy in her evidence.
6. Of note, the compensation in LTB-L-043135-22 would have been owing by the previous Landlord, not Ms. Francis. Ms. Francis did not provide documentary evidence regarding her Agreement of Purchase and Sale to confirm what was contemplated between the previous Landlord and herself regarding the compensation previously paid in LTB-L-043135-22.
7. Given the evidence before the Board I am not satisfied the Landlord has compensated the Tenant an amount equal to one month's rent as required in s.48.1 of the *Act*.

### *Compensation for unpaid utilities*

8. The Landlord sought compensation for unpaid utilities in their L2 application. At the hearing the Landlord did not present any evidence regarding unpaid utilities such as copies of utility bills. Further, the L2 application states \$0.00 as the amount being sought. The Landlord has not proven that they incurred or will incur reasonable out-of-pocket expenses as a result of the Tenant's failure to pay heat, electricity and/or water costs.

### *Compensation for damages*

9. The Landlord sought compensation of \$25,000.00 as 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. The Landlord gave evidence that the Tenant broke railings, broke the door, and damaged the walls in the living room, kitchen, downstairs area, and basement.

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10. To support her oral testimony, the Landlord showed the Board four separate pictures. Three of the pictures show holes in the drywall in various spots throughout the rental unit. The fourth picture showed a door, which appears intact, to be off the hinges. On its face, there does not appear that the damage is so extensive that \$25,000.00 would be a reasonable amount for repairs.
11. When asked about the quantum of damages being sought, the Landlord testified that she was given a verbal quote of \$25,000.00 from a contractor named Darian Williams. This quote, according to the Landlord, is low considering the amount of damages to the rental unit.
12. The Landlord was provided an opportunity to request an adjournment or hold the matter down so she could obtain documentary evidence to support the damage claim (such as a quote or email from Mr. Williams). The Landlord asked to continue the hearing and for me to simply consider her oral evidence on quantum.
13. Given the lack of documentary evidence and witnesses called to support the quantum of damages being sought, I find that the Landlord has not established, on the balance of probabilities, the reasonable out-of-pocket expenses she will incur to repair any undue damage caused wilfully or negligently by the Tenants.

**It is ordered that:**

1. The Landlord's application is dismissed.

**November 29, 2023**

**Date Issued**

**Brett Lockwood**

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.