



**Order under Section 31
Residential Tenancies Act, 2006**

Citation: Ogunjobi v Clarke, 2023 ONLTB 33820

Date: 2023-05-08

File Number: LTB-T-021372-23

In the matter of: 610, 20 MINOWAN MIIKAN LANE TORONTO
ON M6J0E5

Between: Olayimika Ogunjobi Tenant

And

Roy Clarke Landlord

Olayimika Ogunjobi (the 'Tenant') applied for an order determining that Roy Clarke (the 'Landlord') altered the locking system on a door giving entry to the rental unit or residential complex without giving the Tenant replacement keys, entered the rental unit illegally, substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant and harassed, obstructed, coerced, threatened or interfered with the Tenant.

This application was heard by videoconference on April 19, 2023.

The Tenant Olayimika Ogunjobi and the Tenant's Legal Representative Samuel Mason and the Landlord Roy Clarke and the Landlord's Legal Representative Jessica Travers attended the hearing.

For clarity, I have referred to those that testified at the hearing by their names.

Determinations:

1. On March 10, 2023, Ms. Ogunjobi filed this T2 application with the Board. The allegations in the T2 application can be summarized as follows:
 - The Landlord changed the locks to the rental unit without providing the Tenant replacement keys.

- The Landlord entered the rental unit illegally.
- The Landlord substantially interfered with the Tenant's reasonable enjoyment of the rental unit.
- The Landlord harassed, coerced, obstructed, threatened or interfered with the Tenant.

Preliminary Issue

2. At the hearing, the question arose as to whether there is a tenancy agreement between Ms. Ogunjobi and Mr. Clarke.
3. Ms. Ogunjobi asserted she has a tenancy agreement with Roy Clarke. Roy Clarke did not agree and asserted he has a valid lease agreement with Michelle Williams and that no tenancy agreement exists between himself and Ms. Ogunjobi.
4. The parties agreed to deal with the preliminary issue prior to the merits of the application. Both parties were permitted to call evidence and cross examine the other on the preliminary issue as well as make submissions.
5. The rental unit is a two-bedroom condominium and contains two bathrooms.
6. Roy Clarke is the owner of the rental unit and the Respondent.
7. Olayimika Ogunjobi is the Applicant.
8. Mikayla Williams is the daughter of Michelle Williams.

Ms. Ogunjobi's Evidence

9. Ms. Ogunjobi found the rental unit on a website called Roomies. She filled out a profile and responded to an advertisement titled "Mikayla's Room".
10. The online advertisement was for a private room with its own bathroom. Her evidence was she viewed the unit a couple of days prior to moving in. Present at the viewing were Ms. Ogunjobi, Mikayla Williams, Michelle Williams and Roy Clarke.
11. Messages from the Roomies website as well as text messages were submitted into evidence. They show Ms. Ogunjobi and Mikayla Williams discussing the advertised room.
12. The discussions show that initially, the room was unavailable as it was being shown to someone else. When that prospect falls through, a description of the rental space was provided to Ms. Ogunjobi by Mikayla Williams and the two discussed the monthly rent amount. Mikayla Williams asks Ms. Ogunjobi if she can increase her budget and Ms.

Ogunjobi responds that she could. At the hearing, Ms. Ogunjobi's evidence was she and Mikayla Williams agreed the monthly rent would be \$1,000.00.

13. During cross examination, Ms. Ogunjobi admitted that she was not provided any of Roy Clarke's contact information or any instructions or how to pay him rent before or at the time she moved into the unit.
14. Ms. Ogunjobi stated she moved into the rental unit around October 15, 2022 and the total monthly rent was \$2,000.00 to be split evenly between herself and Mikayla Williams.
15. Ms. Ogunjobi testified she had signed a joint tenancy agreement with Mikayla Williams, naming Roy Clarke as the Landlord. She submitted a copy of a lease agreement reflecting these names. This document is dated October 6, 2022. This document is not signed by Roy Clarke. Ms. Ogunjobi's evidence was she misplaced the signed copy of the lease she was originally provided. Her evidence was the original lease agreement had been emailed to her but she could no longer retrieve the email.
16. During cross examination, Ms. Ogunjobi reiterated she had signed the lease. When she was asked how this was done, she said it was done electronically. After further questioning, she admitted she had not personally signed anything but Mikayla Williams had signed on her behalf.
17. Ms. Ogunjobi's evidence was she paid the monthly rent directly to Roy Clarke by e-transfer. A number of e-transfer receipts between the months of October 2022 and February 2023 were submitted into evidence and they were not disputed by Mr. Clarke. They show Ms. Ogunjobi paid her rent to Roy Clarke.
18. During cross examination, Ms. Ogunjobi acknowledged Michelle Williams told her the amount of rent to pay and when it was due. Michelle Williams gave Ms. Ogunjobi Roy Clarke's email so she could pay the rent to him.
19. Ms. Ogunjobi submitted text messages between herself and Roy Clarke. On February 11, 2023, Ms. Ogunjobi asks Roy Clarke for a copy of the lease agreement. Roy Clarke responds by saying there is no lease agreement and that Ms. Ogunjobi had not paid first and last and was on a "month to month".
20. On February 16, 2023, Ms. Ogunjobi again requests a copy of the lease from Roy Clarke. He responds by telling her to contact her roommate's mother for a copy of the lease. Ms. Ogunjobi testified she was confused and asked Roy Clarke what Michelle Williams' role was in this and that she asked Roy Clarke for Michelle Williams' contact information if she is the landlord.

21. Ms. Ogunjobi also testified that Roy Clarke told her he had never rented anything to her and asked her if she had not rented the unit from Michelle Williams. Ms. Ogunjobi's evidence was she did not respond to Roy Clarke or contact Michelle Williams. Her evidence was she was confused at this point as to Roy Clarke's "role in this entire situation".
22. On February 28, 2023 Ms. Ogunjobi was provided a letter advising her to vacate the rental unit. This notice was signed by Roy Clarke and identifies him as the landlord and her as the tenant. Ms. Ogunjobi testified that prior to this in mid to late January 2023, Michelle Williams told her that she was required to leave the rental sometime in May 2023 because Roy Clarke would be using the space for personal use.

Michelle Williams' Evidence

23. Michelle Williams testified she leased the entire rental unit from Roy Clarke for her daughter Mikayla Williams to reside in while she attends school. The lease began on October 1, 2022. She and Roy Clarke signed the lease on October 6, 2022. Michelle Williams did not reside in the rental unit. A copy of the lease was submitted into evidence and it is signed by both Michelle Williams and Roy Clarke.
24. When the lease was signed, Mikayla already had a roommate in mind. However, this person could not move in and Mikayla went looking for another roommate. Michelle Williams testified Mikayla had already started moving into the unit at the time the listing on "Roomies" was placed.
25. Michelle Williams testified that Ms. Ogunjobi responded to the listing and attended the unit for a viewing. She acknowledged that Roy Clarke was present at the viewing as he was in the unit doing some repairs. Michelle Williams testified that she told Ms. Ogunjobi that she was the actual tenant with the lease agreement.
26. Michelle Williams' evidence was Ms. Ogunjobi agreed to pay \$1,000.00 per month and she moved in. Michelle Williams testified she told Ms. Ogunjobi she was to pay the monthly rent to her.
27. Michelle Williams testified that Ms. Ogunjobi was unable to pay her full rent. As a result, Michelle Williams advised Roy Clarke the monthly rent would be paid in installments. She asked if Roy Clarke could manage the issue and speak to Ms. Ogunjobi since she was going to be on vacation out of the country. Michelle Williams' evidence was that Roy Clarke reluctantly agreed to assist but felt it was Michelle Williams' responsibility since he had rented the unit to her.
28. Michelle Williams testified that during the time she was away Ms. Ogunjobi paid her rent to Roy Clarke and continued to pay it to him once she returned.

29. Michelle Williams testified she told Ms. Ogunjobi on January 23, 2023 that Roy Clarke wanted the unit back for his daughter to live in and that Ms. Ogunjobi would be required to vacate the unit. It was her evidence that after this conversation she believed Ms. Ogunjobi may cause “problems”. She asked Roy Clarke to sign a letter advising Ms. Ogunjobi to vacate as it would have carried more weight coming from the actual owner of the rental unit. Michelle Williams testified that Roy Clarke reluctantly agreed and signed the letter. I will note this notice was not on a Board approved form.
30. Michelle Williams testified that the document Ms. Ogunjobi submitted as a lease is actually her lease with Roy Clarke that she changed. She testified she took a copy of her lease agreement with Roy Clarke and removed her name and added Mikayla and Ms. Ogunjobi’s names to it. The reason for this was to file it with the property management of the building so Mikayla Williams and Ms. Ogunjobi would be given access to the facilities at the property.

Mikayla Williams’ Evidence

31. Mikayla Williams testified her mother had rented the rental unit for her and she was looking for a roommate after she had taken possession. She testified that once Ms. Ogunjobi moved in, she signed a copy of a lease document on Ms. Ogunjobi’s behalf to give to the property management. The purpose was to allow both of them living in the unit access to the facilities at the building. This document lists both herself and Ms. Ogunjobi as Tenants.

Roy Clarke’s Evidence

32. Roy Clarke testified he is the owner of the rental unit and he leased it to Michelle Williams effective October 1, 2022. His understanding was she wanted the unit for her daughter and a family friend. A copy of the lease agreement was submitted into evidence and it is signed Roy Clarke and Michelle Allen. Mr. Clarke referred to Michelle Williams as Michelle Allen at one point during the hearing. There was no dispute that Michelle Williams and Michelle Allen are the same person.
33. Mr. Clarke’s evidence was he had no idea the family friend did not move in. He found this out only in March of 2023 during an incident in which the police were called. During cross examination he testified that he thought Ms. Ogunjobi was the family friend who was originally supposed to occupy the rental unit with Mikayla Williams. During the hearing Mr. Clarke stated “I did not know who she was” in relation to Ms. Ogunjobi and explained that he was aware she was living there and paying her rent to him but she was otherwise a stranger to him.

34. Mr. Clarke testified Michelle Williams was supposed to pay the full monthly rent of \$2,000.00 to him as part of their agreement. She called him explaining she was away and the rent would be paid by two emails. He was subsequently contacted by Ms. Ogunjobi in October 2022 and she told him she did not have the money and would pay it in installments. He acknowledged Ms. Ogunjobi paid her rent to him instead of through Michelle Williams. Mr. Clarke testified e-transfers are automatically auto-deposited to his bank account and Ms.Ogunjobi's payments were deposited this way.
35. Mr. Clarke testified that he had no other contact with Ms. Ogunjobi about the rent and he communicated with Michelle Williams in relation to the rental unit since he had rented it to her.
36. In January of 2023, Mr. Clarke advised Michelle Williams he needed the rental unit back for use by his daughter who was going to be back in school. He asked Michelle Williams to return the unit to him the way she received it. I took this to mean vacant.
37. Mr. Clarke testified that Michelle Williams asked him to sign a notice advising Ms. Ogunjobi to vacate the rental unit. His evidence was there was an argument between Michelle Williams and Ms. Ogunjobi over the verbal request to vacate. Mr. Clarke's evidence was he did not want to get involved but he reluctantly agreed to sign the notice. During cross examination, he acknowledged he signed a document in which he was identified as the landlord and Ms. Ogunjobi was identified as the tenant.
38. The evidence of Mr. Clarke was that after he signed this notice, Ms. Ogunjobi contacted him seeking a copy of the lease. He told Ms. Ogunjobi to contact Michelle Williams because he did not know who she was. His evidence was there were no ongoing emails or communications between himself and Ms.Ogunjobi.
39. On cross examination Mr. Clarke was asked what he meant when he texted a reply to Ms. Ogunjobi stating she was on a "month to month". He explained he was basing that on what Michelle Williams had told him. He knew she was living in the unit and that she was paying rent to him.
40. Mr. Clarke testified that prior to seeking legal advice for this hearing he had limited understanding of the legal meaning of various terms such as lease, rental agreement, occupant, roommate tenant or guest. His evidence was he used them interchangeably but understands them now.
41. Mr. Clarke testified he never had any intention of creating a tenancy with Ms. Ogunjobi.

Analysis

42. Section 2(1) of the *Residential Tenancies Act, 2006* (the Act) defines a tenancy agreement as: “tenancy agreement” means a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit;

43. Section 2(1) of the Act also sets out the definition of a landlord and a tenant. It states:

“landlord” includes,

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent;

and

“tenant” includes a person who pays rent in return for the right to occupy a rental unit and includes the tenant’s heirs, assigns and personal representatives, but “tenant” does not include a person who has the right to occupy a rental unit by virtue of being,

(a) a co-owner of the residential complex in which the rental unit is located, or

(b) a shareholder of a corporation that owns the residential complex;

44. In considering the evidence presented at the hearing I am also mindful of section 202(1) of the Act. It requires me to determine the real substance of all transactions and activities. It reads as follows:

In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

45. I found the evidence of Ms. Ogunjobi respecting the nature of her agreement to occupy the rental unit to be unreliable. She first stated she had signed a lease directly with Mr. Clarke. She testified she received a copy of it but could not access it in her email. She provided an unsigned copy in her evidence to support her application. During cross examination she admitted she had not signed a lease agreement with Mr. Clarke but had Mikayla Williams sign it for her. I find on a balance of probabilities this was the document Michelle Williams created to allow Ms. Ogunjobi and Mikayla Williams access to the facilities at the building.
46. I am convinced on a balance of probabilities no signed lease agreement ever existed between Ms. Ogunjobi and Roy Clarke. I do not find Ms. Ogunjobi was being dishonest in any way during her testimony. However, her testimony regarding a highly relevant piece of evidence was clearly inaccurate. In my view, she was mistaken in her recollection of the events and as a result, I had concern with the reliability of the remainder of her evidence given the subject matter of this inaccuracy was not trivial.
47. It is clear from the evidence taken at the hearing, there was no written agreement between Ms. Ogunjobi and Mr. Clarke whereby Ms. Ogunjobi would pay rent to Mr. Clarke in exchange for the right to occupy the rental unit. I also find on a balance of probabilities no oral agreement existed between Ms. Ogunjobi and Mr. Clarke. No evidence was presented that Ms. Ogunjobi and Mr. Clarke had discussed terms, dates, rent amounts or any other details required to form an oral agreement prior to Ms. Ogunjobi moving into the rental unit. Ms. Ogunjobi had all such negotiations with Mikayla and Michelle Williams. Michelle Williams was herself a tenant, and it was Ms. Williams who provided Ms. Ogunjobi with possession of the rental unit.
48. I must also consider whether an implied tenancy agreement existed between Ms. Ogunjobi and Mr. Clarke.
49. Mr. Clarke was aware Ms. Ogunjobi was residing in the rental unit with the daughter of his tenant Michelle Williams. I accept his evidence that he did not know her before she moved in and believed her to be the family friend of Michelle Williams until he learned she was not.
50. After her occupancy began, Ms. Ogunjobi started paying her share of the rent directly to Mr. Clarke, which can be indicative of a tenancy agreement. However, I accept the evidence of Michelle Williams and Mr. Clark that this practice only began out of convenience for Michelle Williams who was away on vacation. She asked Mr. Clarke to assist with the collection of Ms. Ogunjobi's rent and he did. I do not find it unreasonable that a landlord is content when they receive the rental revenue they expect, regardless of who chooses to pay it. That Ms. Ogunjobi continued to pay her rent this way is not determinative of the issue in my view. Additionally, Ms. Ogunjobi took direction from

Michelle Williams on the amount to pay and when. In the circumstances, I do not think the payments to Mr. Clarke alone, can support a finding of an implied tenancy agreement.

51. The communications between Mr. Clarke and Ms. Ogunjobi could also be taken to imply a tenancy agreement, however context is important. Firstly, Mr. Clarke clearly indicates to Ms. Ogunjobi there is no lease between them. Further Mr. Clarke specifically told Ms. Ogunjobi he did not rent anything to her. I accept Mr. Clarke's explanation that his statement that there was a "month to month" arrangement was based on a combination of his limited legal understanding of the words being used and what Michelle Williams had told him about who was living in the rental unit. I find on a balance of probabilities that when viewed in its totality, the communication between the parties does not establish the existence of implied tenancy agreement. On the contrary, it supports Mr. Clarke's testimony that he had never entered into a tenancy agreement with Ms. Ogunjobi.
52. The notice to vacate Ms. Ogunjobi received was signed by Mr. Clarke and it identified him as the landlord. On its face, this notice could be indicia of an implied tenancy agreement. I accept the explanation for this document provided by Michelle Williams and Mr. Clarke. Michelle Williams was concerned she would have difficulty returning vacant possession to Mr. Clarke and wanted a notice signed by the owner. I do not find on a balance of probabilities the misuse of terms "landlord" and "tenant" in this notice to be indicative of an implied tenancy. Particularly since Mr. Clarke, at the time the notice was signed, was in fact the landlord of this rental unit, albeit to Michelle Williams.
53. In their communications, Mr. Clarke specifically told Ms. Ogunjobi to contact Michelle Williams in relation to questions about a lease. Ms. Ogunjobi admitted this left her confused as to who the landlord was. Inexplicably, she did not contact Michelle Williams for clarification of her own concerns. Ms. Ogunjobi's own confusion and her subsequent inaction, is in my view, on a balance of probabilities, evidence an implied tenancy agreement did not exist.
54. No evidence was presented at the hearing of any typical communications between Ms. Ogunjobi to Mr. Clarke that might be expected in these parties in fact had a landlord and tenant relationship. For instance, no evidence of any maintenance requests made by Ms. Ogunjobi to Mr. Clarke were presented. No evidence of any discussion regarding the unit or the building were presented. No evidence of notices of entry were tendered. Nothing was given in evidence that showed the two interacted in any way apart from the communications I have already addressed. I find on a balance of probabilities this lack of any interaction between the parties does not support a finding of an implied tenancy agreement.
55. Additionally, pursuant to section 202(1) of the Act, when I consider the real substance of the transactions and activities of the parties, I do not find that Ms. Ogunjobi and Mr. Clarke intended at any point to create a tenancy agreement between themselves. They discussed

no details or terms and agreed on nothing together. The also signed nothing together. Their actions do not imply a tenancy agreement between them. I find of a balance of probabilities Mr. Clarke had a valid lease agreement with Michelle Williams and had no interest in a tenancy agreement with Ms. Ogunjobi. I also find Ms. Ogunjobi knew or should have known her living accommodation was arranged with Mikayla and Michelle Williams and this relationship did not change while she lived in the rental unit.

56. This is a Tenant application. It is therefore the Applicant's burden to prove on a balance of probabilities a tenancy agreement existed between the Applicant and the Respondent. When I consider all the evidence presented and the circumstances surrounding the activity between the parties, I am not satisfied Ms. Ogunjobi has done so. As Ms. Ogunjobi was not a tenant of the rental unit, she does not have standing under section 29(1) of the Act to file this application.
57. Further, Ms. Ogunjobi cannot file an application against Ms. Williams despite the fact that it was Ms. Williams who allowed her to occupy the rental unit. The definition of "landlord" in section 2(1) of the Act expressly excludes a tenant who is occupying the rental unit. As Ms. Williams was the actual Tenant occupying the rental unit she is not considered a landlord under the Act.
58. For the above reasons, I do not find the Act applies to Ms. Ogunjobi's residency at the rental unit as there was no tenancy agreement between her and Mr. Clarke. As a result, the application will be dismissed.
59. This order contains all my determinations and reasons. No further reasons will be issued.

It is ordered that:

1. The application is dismissed.

May 8, 2023

Date Issued

John Cashmore

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.