



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

Citation: Thoma v Bryant, 2023 ONLTB 20151

Date: 2023-02-14

File Number: LTB-L-046744-22

In the matter of: 29984 KERWOOD RD
KERWOOD ON N0M2B0

Between: Rachel Thoma Landlord

And

Kelsey Bryant and Russell Bryant Tenants

Rachel Thoma (the 'Landlord') applied for an order to terminate the tenancy and evict Kelsey Bryant and Russell Bryant (the 'Tenants') because:

- the Tenants or another occupant of the rental unit has committed an illegal act or has carried out, or permitted someone to carry out an illegal trade, business or occupation in the rental unit or the residential complex.

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

This application was heard by videoconference on February 6, 2023.

The Landlord, the Landlord's legal representative, Timothy Mobberley, and Kelsey Bryant (KB) attended the hearing. Police Constable Mike Piunno attended the hearing as a witness for the Landlord.

The parties agreed that Russell Bryant was no longer residing in the rental unit as of the hearing date.

Preliminary Issues:

KB's Failure to Remain in Attendance at the Hearing

1. During the course of oral arguments with respect to KB's request for an adjournment (see below), KB disconnected from the videoconference.
2. I stood the matter down in the hopes that she would reconnect to the hearing and proceeded to deal some other matters.
3. KB reconnected to the videoconference while I was dealing with another matter but disconnected again before I had the opportunity to address her.

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4. The Landlord's representative then communicated with KB by text and email and she informed him that she had reconnected to the hearing, heard that I was dealing with another matter, and disconnected from the hearing again. At my request, the Landlord's legal representative communicated back to KB that she should reconnect to the hearing and that the hearing was about to proceed, but she did not reconnect.
5. It is clear from the text and email communications between KB and the Landlord's legal representative *and the timing of those communications* that KB had the means of attending the hearing, but chose not to do so.
6. As I was satisfied that KB had a reasonable opportunity to participate in the proceedings, but chose not to do so, I proceeded with the hearing in KB's absence.

Request for Adjournment

7. KB was not in attendance at the commencement of the hearing.
8. KB phoned the Landlord's legal representative moments after the hearing began and before any witnesses were called.
9. KB then phoned in to the hearing and spoke to Tenant Duty Counsel.
10. KB requested an adjournment stating that she did not find out about the hearing until the day of the hearing.
11. The Board's records show that two notice of hearing packages were mailed to the Tenants on January 21, 2023. KB confirmed that the Board has the correct mailing address for the Tenants. These notice of hearing packages were not returned to the Board as undelivered.
12. The Landlord's legal representative said that he had served his disclosure package on KB by leaving it in her mailbox on January 26, 2023. He also said that he sent a courtesy copy to Michael Drater, a friend of KB who had previously assisted her in a different matter before the Board.
13. The Landlord's legal representative said that he had left several voice messages for KB leading up to the hearing and that KB had left a voice message for him on Friday, February 3, 2023, but they never connected.
14. KB said that she received voice messages from the Landlord's legal representative and phoned Michael Drater to find out if he knew what was going on. She said that Michael Drater informed her about the proceedings and told her that he had informed the Landlord's legal representative that he was not representing KB in this matter.
15. KB said that she had surgery on January 23, 2023 and returned home on January 28, 2023. She said that she had not checked her mail since her surgery.
16. I did not find KB to be credible with respect to her request for adjournment. I find it wholly unbelievable that after receiving voice messages from the Landlord's legal representative that KB would not have checked her mailbox (or had someone else check her mailbox if she was having physical difficulties in doing so).
17. KB also said that she did not receive the notice of termination served on her on August 16, 2022 and that she had no idea what these proceedings were about.

18. Again, I did not find KB to be credible. The notice of termination was served on KB by the Landlord's legal representative who left it in her mailbox. I accept that this occurred and find that KB was served with the notice of termination. KB has also been charged criminally with respect to the events giving rise to these proceedings and I do not accept that she is unaware of the subject matter of these proceedings.
19. As a result, I denied KB's request for an adjournment because I find that she was aware of these proceedings or was wilfully ignorant of them.

Determinations:

20. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy will terminate and the Tenants will be ordered to pay compensation for use of the rental unit from January 1, 2023 onward as the rent has been paid up to December 31, 2022.
21. On August 16, 2022, the Landlord gave the Tenants an N6 notice of termination. The notice of termination states that KB broke into the Landlord's outbuilding in the residential complex on August 4, 2022 and stole fuel from the Landlord.
22. The Landlord submitted into evidence clear video and photographic evidence recording KB breaking into the outbuilding and stealing fuel from the Landlord.
23. Both the Landlord and Police Constable Mike Piunno confirmed KB's identity in the video evidence. Police Constable Mike Piunno also confirmed that KB has been charged with break and enter, trespassing, and theft.
24. I am satisfied that the Landlord has proven on a balance of probabilities that KB has committed illegal acts contrary to the criminal code.
25. The Tenants are required to pay the Landlord \$1,703.01 in daily compensation for use and occupation of the rental unit for the period from January 1, 2023 to February 6, 2023.
26. Based on the Monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I understand that KB claims to be recovering from surgery, however no information was provided with respect to the nature of the surgery or the duration of the recovery. As a result, there was insufficient information before me to warrant delay or relief from eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 25, 2023.

2. If the unit is not vacated on or before February 25, 2023, then starting February 26, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 26, 2023.
4. The Tenants shall pay to the Landlord \$1,703.01, which represents compensation for the use of the unit from January 1, 2023 to February 6, 2023.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenants owe the Landlord is \$1,889.01.
7. The Tenants shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting February 7, 2023 until the date the Tenants move out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before February 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 26, 2023 at 5.00% annually on the balance outstanding.

February 14, 2023
Date Issued

Richard Ferriss
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on August 26, 2023 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.