



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

Citation: Grant v Adjei, 2022 ONLTB 12835

Date: 2022-11-25

File Number: LTB-L-014770-22

In the matter of: 1, 348 SHAKESPEARE STREET
OTTAWA ONTARIO K1L5L9

Between: Jean Grant Landlords
Rossana Dimito

And

Edith Adjei Tenants
Eugenia Adjei

2022 ONLTB 12835 (CanLI)

Jean Grant and Rossana Dimito (the 'Landlords') applied for an order to terminate the tenancy and evict Edith Adjei and Eugenia Adjei (the 'Tenants') because:

- 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; and
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex; and
- the Tenants have been persistently late in paying the Tenants' rent.

The Landlords also applied for an order requiring the Tenants to pay the Landlords' reasonable out-of-pocket costs the Landlords have incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on October 3, 2022.

The Landlords, and the Tenant, Eugenia Adjei, attended the hearing. The Tenant declined the opportunity to speak to Tenant Duty Counsel prior to the hearing.

Preliminary Issue:

1. The Tenants were no longer in possession of the rental unit when the Landlord filed an amended version of the L2 application to reflect that termination of the tenancy was no longer being sought. In the amended L2 application, the Landlords are seeking compensation in the amount equivalent to one month's rent and compensation for damages in the amount of \$300.00. Based on the evidence before me, I am satisfied the Tenants were made aware of the amended L2 Application and its contents.

Determinations:

2. As explained below, the Landlords have proven on a balance of probabilities the claim for compensation equivalent to one month's rent in the application.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. The Landlords testified the Tenants advised they would vacate the rental unit on February 28, 2022 but changed their minds and would vacate on March 31, 2022 based on the N8 Notice of Termination given to them by the Landlords.
5. The Landlords testified that based on the Tenants vacating on March 31, 2022, they advertised the unit for rent and entered into a lease agreement on or about February 18, 2022 with new tenants. The new tenancy agreement would commence on April 1, 2022.
6. The Landlords testified that on March 20, 2022, they contacted the Tenants by email requesting confirmation they would be vacating the rental unit on March 31, 2022. In this email, the Landlords wrote:

While we are waiting for our eviction application to be processed by the board, our new tenant has asked us to provide him positive confirmation that the apartment will be available to him at the end of the month or to return his deposit. In good conscience we cannot leave him in limbo any longer. In addition, he will have legal recourse to file for additional costs he incurs as a result of the breach of contract.

As we will amend the application for your eviction to include any costs resulting from you not leaving by end of March as you agreed, we are giving you the opportunity to confirm that you will vacate the apartment at the end of this month and thereby avoid any additional costs.

7. The Landlords testified they contacted the Tenants again on March 24, 2022 as they did not receive a response from the Tenants. In this email, the Landlords wrote:

Since you did not reply to our email we were forced to return our tenants deposit and cancel the lease. We will amend the eviction notice to include all costs and losses we incur.

8. The Landlords testified that on the same day they received a response from the Tenants in which the Tenant, Eugenia Adjei wrote:

I hope you realize that I can sue you for all these harassments

The Landlords' response was:

We gave you a chance to participate in a decision that impacts not only us and the new tenant but you as well particularly from a cost perspective but you choose to ignore our emails and do nothing to mitigate your costs...

It's unfortunate you see responsible, cooperative behaviour as harassment but we doubt anyone else would.

9. The Landlords testified that based on the Tenant's response to their emails, they were unsure if the Tenants would vacate the rental unit on March 31, 2022. They testified that on March 31, 2022, they received a text message from the Tenant in which she wrote "Hi I'm leaving the keys with your son".
10. The Landlords testified that due to the actions of the Tenant, they were not able to rent the unit until May 1, 2022 and are therefore seeking compensation in the amount of \$1,195.00 for the loss of one month's rent.
11. The Landlords also claimed \$300.00 for damages to the rental unit however the Landlords did not offer any evidence to support this claim, therefore this portion of the application shall be dismissed.
12. The Tenant testified it was her plan to vacate the rental unit on February 28, 2022 but after seeking legal advice, she advised the Landlords that she would be vacating the unit on March 31, 2022 as this was the termination date on the N5, N7 and N8 notices of termination. The Tenant testified that although she did not respond to the Landlords' request for confirmation of this date, it was her belief that she was abiding by the date on the notices of termination therefore confirming she was vacating March 31, 2022 was unnecessary.
13. The Tenant is seeking the application be dismissed as she vacated the unit on March 31, 2022 as per the Landlords' notices of termination.

Analysis:

14. In determining the amount owing, consideration is given to whether or not the Landlords took reasonable steps to minimize their losses. Sections 16 and 88 (4) of the *Residential Tenancies Act, 2006* (the 'Act') oblige the Landlord to exert reasonable efforts to find tenants to rent the unit as of April 1, 2022.
15. Based on the evidence before me, I am satisfied the Landlords took reasonable steps to re-rent the unit on April 1, 2022. I say this because after receiving notification from the Tenants that they would vacate the unit on March 31, 2022, the Landlords signed a tenancy agreement with the new tenant commencing April 1, 2022 and accepted a deposit from the new tenant. When seeking confirmation that the Tenants would be vacating the rental unit on March 31, 2022, the Tenants chose not to respond affirmatively to their intention to vacate instead they threatened to sue for harassment. The Landlords ultimately returned the deposit to the new tenant and actively advertised the unit again when they received the text message with respect to the keys from the Tenants on March 31, 2022.
16. The Tenants also have a duty to mitigate their losses under Sections 16 and 88(4) of the Act. The Tenants did not act appropriately in their communication with the Landlords confirming it was their intention to vacate the rental unit on March 31, 2022 and waited until the evening of March 31, 2022 to advise the Landlords of where they could retrieve the keys. The Tenants were aware the Landlords had secured a new tenant for the unit effective April 1, 2022 but chose to act in such a way to hinder the Landlord's ability to rent the unit. As such, I find the Landlord is entitled to compensation in the amount of \$1,195.00 which is equivalent to one month's rent.

17. As no documentary evidence was offered by the Landlords to support their claim in the application for damages, this portion of the application is dismissed.

It is ordered that:

1. The Tenants shall pay to Landlord \$1,195.00, which represents the amount of rent owing for the period of April 1, 2022 to April 30, 2022.
2. The Landlord shall apply the last month's rent deposit to the rent for March 2022.
3. The Tenants shall also pay to the Landlords \$201.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlords is \$1,396.00.
5. If the Tenants do not pay the Landlords the full amount owing on or before December 6, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 7, 2022 at 4.00% annually on the balance outstanding.

November 25, 2022

Date Issued

Susan Priest

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.