



**Order under Section 69 and 89
Residential Tenancies Act, 2006**

Citation: Rai v Oromitan, 2022 ONLTB 8637

Date: 2022-10-24

File Number: LTB-L-003442-21

In the matter of: 1605, 236 ALBION RD
ETOBICOKE ON M9W6A6

Between: Harjinder Rai Landlord

And

Grace Oromitan Tenant

Harjinder Rai (the 'Landlord') applied for an order to terminate the tenancy and evict Grace Oromitan (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes (L1 Application); and
- the Tenant has been persistently late in paying the Tenant's rent; (L2 Application).

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

This application was heard by videoconference on July 6, 2022.

Only the Landlord attended the hearing.

As of 2:04PM, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

PRELIMINARY ISSUE: DID THE TENANT ABANDON THE RENTAL UNIT

1. Based on the evidence before the Board, I do not find the Tenant to have abandoned the rental unit. I say this for the following reasons:
2. The Landlord's uncontested evidence was, they were advised by the building management that the Tenant had moved large furniture through the passenger elevator on December 7, 2021. However, the Tenant's car was still parked in the spot on that day. The Landlord testified that several notices of termination were served to the Tenant, one in July 2021 and two in December 2021.
3. At no point did the Tenant inform the Landlord she was vacating the rental unit, nor were the keys returned to the Landlord. Between then and January 4, 2022, the Landlord drove

2022 ONLTB 8637 (CanLI)

by the rental unit and saw the lights on at different times. The Landlord sent text messages to the Tenant but did not receive a response.

4. On January 4, 2022, the Landlord inspected the rental unit to find it trashed without any personal items apart from an old pair of shoes. On this day, the Tenant's car was no longer parked in the underground parking spot.
5. The Board's Interpretation Guideline 4 entitled Abandonment of a Rental Unit explains the concept of abandonment as follows:

Abandonment is a **unilateral act** by the tenant to relinquish their tenancy and **give up possession of the rental unit** without properly giving notice of the termination to the landlord ...

[Emphasis added.]

6. The problem with the Landlord's application is that the evidence before me establishes that two notices of termination were given to the Tenant in December 2021 and thus, the Tenant did not unilaterally end their tenancy.
7. Subsection 37(2) of the Act states:

37(2) If a notice of termination is given in accordance with this Act and the tenant vacates the rental unit in accordance with the notice, the tenancy is terminated on the termination date set out in the notice.
8. Given all of the above, I am not satisfied that the Tenant has abandoned their tenancy.

L1 Application – Non-Payment of Rent

9. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant 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.
10. As of the hearing date, the Tenant was no longer in possession of the rental unit as of January 4, 2022.
11. The lawful monthly rent was \$2,200.00. It was due on the first day of each month.
12. Based on the Monthly rent, the daily rent/compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
13. The Tenant has not made any payments since the application was filed.
14. The rent arrears owing to January 4, 2022, are \$2,689.32.
15. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

16. There is no last month's rent deposit.

17. The Landlord seeks an order for the arrears and costs.

L2 Application – Persistent Late Payment of Rent

18. As part of the Landlord's L2 application includes a claim for compensation in the amount of \$521.39 pursuant to subsection 89(1)(a) of the Act which states:

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; and

...

19. In order for an application to succeed under subsection 89(1) of the Act, a landlord must establish the following:

- (a) There was property damage to the rental unit or residential complex;
- (b) The damage is "undue" meaning that it is not normal wear and tear, and it is not insignificant; and
- (c) The damage was a result of wilful or negligent conduct.

20. In this context, I take the word "property" to refer to the physical objects like the walls, ceilings, floors, appliances and fixtures in a residential complex.

21. If all of these factors are met, then the amount the Board can award is limited to the reasonable cost of repair – the replacement cost cannot be awarded unless it is not reasonable for the damage to be repaired.

22. The Landlord's uncontested evidence was, on June 10, 2021, the Tenant texted the Landlord that the toilet had overflowed; building management was called for the emergency repair. The plumber, contracted by the management company, attended the rental unit and cleared the clog, installed a new toilet handle and fill value and repaired the supply line.

23. A copy of the invoice was submitted into evidence by the Landlord, which was sent to her by the management company on June 28, 2021 – totalling \$285.89, requesting the Landlord to remit payment to the management company.

24. On August 17, 2021, the Landlord received another letter from the management company – a notice of lien – for the invoice that remained unpaid, together with the interest accrued on the unpaid balance and a charge of \$226.00 for the Condominium Corporation's expense to collect this amount, totalling \$521.39. Three days later, the Landlord paid this amount.
25. The Landlord submits that it was the Tenant's responsibility to make payment but that the Tenant never paid the amount to the corporation, resulting in additional fees being levied against her. The Landlord seeks reimbursement of this amount in full.
26. Based on the uncontested evidence before the Board, I find that the damage to the toilet constitutes property damage that was not a result of normal wear-and-tear; rather, it was a result of a clogged toilet and a broken valve and handle. I also find that it was a result of the Tenant or their occupant's wilful or negligent conduct.
27. With respect to the invoice of \$285.89, I find this amount to be the actual amount incurred by the management company and charged to the Landlord to perform the repair and this amount is reasonable and shall be awarded.
28. With respect to the Landlord's request for an order for the remaining balance, I do not find this amount falls under the definition of damage nor did it result from the Tenant's failure to make payment. I say this because the letter that was served to the Landlord on June 28, 2021 with the invoice requires the Landlord to make payment directly to the property management company. The letter states in part the following:
- The Corporation has received an invoice from Expert Plumbing & Drains Inc. for an emergency call for a leak at your unit into the unit below. **A copy of the invoice is enclosed for your reference. According to the Corporation's Declaration and By-Laws this charge is your responsibility, and collectible in the same manner as your common area maintenance fees and therefore, can be lienable if not paid.**
29. While the expense was incurred as a result of the Tenant's conduct, the Landlord's choice to wait to make payment resulted in further financial penalties that I cannot find the Tenant to be responsible for.
30. As such, the Landlord's claim for the remaining balance of \$235.50 must be dismissed.
31. An order shall issue accordingly.
32. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of January 4, 2022 – the date the Tenant vacated the premises.
2. The Tenant shall pay the Landlord \$2,689.32 which represents the arrears owing for the period ending January 4, 2022.

3. The Tenant shall also pay to the Landlord \$285.89 for the cost incurred by the Landlord to repair the damage to the toilet.
4. The Tenant shall also pay to the Landlord the cost to file the application in the amount of \$186.00.
5. The total amount owing is \$3,161.21.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 4, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 5, 2022 at 4.00% annually on the balance outstanding.

October 24, 2022

Date Issued

Sonia Anwar-Ali

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.