

CITATION: Rugiano v. Gibson, 2025 ONSC 6837
COURT FILE NO.: CV-24-00002123-0000
DATE: 20251208

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Peter Rugiano, Applicant

AND:

Christine Gibson and Aaron Goard, Respondents

BEFORE: The Honourable Justice C. Boswell

COUNSEL: Domenic Saverino, Counsel for the Applicant

No one appearing for the Respondents

HEARD: December 4, 2025

ENDORSEMENT

Overview

[1] The Applicant is the owner of a parcel of land located on Highway 48 in Beaverton, Ontario. There are two structures on the land: a residence and a barn. The Respondents leased the residence from the Applicant by way of a lease dated April 1, 2023. The Respondents also occupied the barn, despite not entering into a formal lease arrangement with the Applicant for its use. This proceeding involves a dispute about what, if anything, the Respondents should be obliged to pay to the Applicant for their occupation of the barn between July 2023 and May 2025.

[2] The Applicant commenced these proceedings by way of a Notice of Application on September 25, 2024. He sought an order that the Respondents vacate the barn, an order for possession of the barn, and damages of \$70,000 to September 1, 2024, together with \$2,000 per month plus reimbursement for hydro costs for every month the Respondents remained in possession of the barn after September 2024.

[3] The Application came before me on March 20, 2025. At that time, the Applicant was seeking an order for possession of the barn, the payment of rent for the Respondents' occupation of the barn, and the costs of cleaning up the barn after the Respondents vacated it.

[4] I released an endorsement on that same date. It directed the Respondents to vacate the barn within 30 days. I adjourned the remaining outstanding issues to a date to be fixed by the trial co-ordinator for the following reasons:

- (a) The Applicant took the position that the Respondents had, by occupying the barn, effectively agreed to the monthly rent he was asking for it, which was \$2,000 per month. He did not, however, provide any caselaw in support of that position. Nor did he otherwise provide any evidence of the market value of the barn as a rental property. I directed the parties to file statements of law on the subsequent return of the Application, providing any legal authorities supporting their positions; and
- (b) The Applicant had no evidence regarding clean-up fees, since none had been incurred yet. I urged him to document the condition of the barn after the Respondents vacated it.

[5] I fixed the costs of the Application, to that point, at \$5,000 and ordered the Respondents to pay those costs within 30 days. I understand they have not done so.

The Return of the Application

[6] The Application came before me again on December 4, 2025, which is a date set through the trial co-ordinators' office, at the request of the Applicant. The Respondents did not file any materials in advance of the hearing, nor did they attend the hearing.

[7] It does not appear from the materials filed on Case Centre that a Notice of Return of Application was served. It is unclear to me whether the Respondents were advised of the return date by the trial co-ordinators. The Applicant's counsel advised that the Respondents were notified by email of the return date. He appears to have served a confirmation of the return date on November 20, 2025 by email.

[8] The Applicant did not file any further evidence in advance of the hearing on December 4, 2025. In the result, the court continues to have no evidence of any clean-up fees incurred. There is also no evidence as to market rent for the barn. The Applicant's counsel advised that he was unable to obtain such evidence as a result of an absence of barns for rent in the area.

[9] The Applicant's counsel advised that the only live issue for determination by the court is the question of damages arising from the Respondents' unpaid occupation of the barn from July 2023 to May 2025.

The Evidentiary Record

[10] The evidentiary record consists only of the Applicant's affidavit sworn March 3, 2025. Amongst other things, the Applicant deposed that:

- (a) The Respondents entered a lease to rent the residence on the subject property commencing April 1, 2023, at a monthly rental cost of \$2,600. They also asked about renting the barn on the property. He told them that they could rent it for \$2,000 per month and that he would give them three months rent free. No agreement was reached, however, on the barn rental.

- (b) The Applicant attended the property in June 2023 and observed that the Applicants were occupying the barn. On June 22, 2023 he delivered a notice to them that they were to start paying him \$2,000 per month commencing July 1, 2023. On August 28, 2023, the Respondents replied to his notice, indicating that they “never fathomed” that the rent for the barn would be \$2,000 per month and that they understood that most barns rented for \$300 to \$500 per month.
- (c) On October 2, 2023, the Applicant delivered a notice to the Applicants setting out the rent due and owing on the barn, at a rate of \$2,000 per month. The Respondents replied the next day, indicating that they had not agreed to pay \$2,000 per month.
- (d) On October 10, 2023, the Applicant directed the Respondents to remove their equipment and livestock from the barn. They did not do so.
- (e) The Respondents fell into arrears in the payment of rent on the residence. Two proceedings at the Landlord and Tenant Tribunal followed. In the meantime, the Respondents continued to occupy the barn and paid no rent for it.
- (f) The Applicant attempted to retain a bailiff to evict the Respondents from the barn but was told that a court order would be necessary.

[11] The Applicant’s counsel advised that the Respondents did vacate the barn following my endorsement of March 20, 2025. I do not have any evidence as to the date that they did so.

The Applicant’s Position

[12] In his factum filed with the Application, the Applicant took the position that he was entitled to be paid rent in the amount of \$2,000 from and after July 1, 2023 to the date the Respondents vacated the barn. He did not provide the legal basis for that position, other than to submit that the Respondents continued to occupy the barn knowing that his rental price was \$2,000 per month. In effect, he asserted that the Respondents’ occupation of the barn constituted their acceptance of his rental terms.

[13] The Applicant filed written submissions prior to the hearing of the Application on December 4, 2025. In those submissions, he asserted that the Respondents’ occupation amounted to trespassing and that he was entitled to reasonable compensation for that occupation. He submitted that reasonable compensation would be \$1,250 per month, which split the difference between the \$2,000 per month he was seeking and the \$500 per month the Respondents were offering at one time.

[14] On the argument of the motion, the Applicant took the position that he is entitled to \$2,000 per month for the period between July 2023 and May 2025, a total of \$46,000.

The Issues

[15] The issues to be determined are the following:

- (a) Did the parties enter into an enforceable lease with respect to the barn?
- (b) Were the Respondents trespassers in relation to the barn?
- (c) What, if any, damages is the Applicant entitled to?

[16] I will consider these issues in turn.

(a) Was there a binding lease?

[17] There was clearly no written agreement with respect to the leasing of the barn. The Applicant's position, while not clearly articulated, appears to be that he conveyed an offer to lease the barn to the Respondents for \$2,000 per month. They accepted that offer, in the Applicant's submission, by conduct that manifested an intent to be bound by the Applicant's terms.

[18] In *Owners, Strata Plan LMS 3905 v. Crystal Square Parking Corp.*, 2020 SCC 29, the Supreme Court of Canada endorsed the common law's long adherence to the objective theory of contract formation. The objective test as to whether a binding contract has been made requires "an examination of how each party's conduct would appear to a reasonable person in the position of the other [...] Thus, a court should determine whether a reasonable person in the position of one party would consider that the other party's conduct constituted an offer [...] And, conversely, whether a reasonable person in the position of the latter would consider that the former's conduct constituted an acceptance." See para. 33.

[19] The Applicant did not explore the objective test of contract formation in argument. On my own view of the evidence, it appears clear that in any discussions the parties had regarding the rent of the property, the Respondents did not agree to pay \$2,000 per month. They certainly didn't pay \$2,000 a month for any period of time. Indeed, they paid nothing.

[20] The Applicant has not satisfied me, on an application of the objective test of contract formation, that there was a binding contract whereby the Respondents agreed to lease the barn for \$2,000 per month.

(b) Were the Respondents trespassers?

[21] The tort of trespass "arises when a person without lawful justification enters upon, remains upon, or places or projects any object upon land with respect to which another person has a legal right of occupation or possession." See *Rossiter v. Swartz*, 2013 ONSC 159, at para. 21.

[22] There is no question, in my view, that the Respondents were trespassers in relation to their occupation and use of the barn. In the absence of a binding agreement to lease it, they had no right to occupy it.

(c) What damages is the Applicant entitled to?

[23] Having established that the Respondents committed the tort of trespass, the court's task becomes one of assessing the damages arising from that tort.

[24] Trespass is actionable *per se*, which means it does not require proof of actual damages. See *Rossiter*, para. 26. That said, if the Applicant were seeking clean-up or repair costs, some evidence of those would be required. Here there is no such evidence. The Applicant is limited to damages for having been deprived of his property as a result of the trespass; what is, in effect, occupation rent.

[25] In *Dagarsho Holdings Ltd., v. Bluestone*, 2004 CanLII 11271 (ONSC), Karakatsanis J., as she then was, described occupation rent as an equitable remedy. She described its general principle as follows, at para. 26: "if a person is in occupation without a lease, although the relationship of landlord and tenant will not exist, the law will imply a contract for payment to the landlord of a reasonable amount for the use and occupation of his land."

[26] A common way of determining what a "reasonable amount" is in each case, is to consider market value rent for a similar property. As I noted, I have no evidence of market value rent for similar barns. The evidence in the record, going to value, consists only of the Applicant's request for \$2,000 per month and the Respondents' position that \$500 was more reasonable. I have no idea if either of their positions is even close to the mark.

[27] It is apparent that the Applicant's position at \$2,000 does not represent market value. The court asked that he produce evidence of market value and, according to his counsel, he was unable to obtain that evidence. A reasonable inference is that his valuation was not based on market rates and was, instead, a random figure he selected, knowing that he had the Respondents in a difficult bargaining position. They had already entered into a lease for the residence. They needed somewhere to store equipment and house livestock. He was obviously in the stronger bargaining position.

[28] For their part, the Respondents were motivated to pay as little as possible. The record makes it abundantly clear that they were in a precarious financial position. As it happened, they paid nothing for their occupation of the barn for almost two years.

[29] All of this is to say that a reasonable value is undoubtedly to be found somewhere between the parties' respective positions. With no evidence to assist me, I can do no better than to simply split the difference between them, as the Applicant suggested in his written submissions.

[30] I have no evidence regarding when the barn was vacated. I ordered it vacated within 30 days of March 20, 2025. Assuming that order was complied with, the Respondents would have been out before the end of April, 2025. On that basis they owe rent for 22 months. Using a value of \$1,250 per month, they owe \$27,500, which is the amount I order them to pay as damages for their trespass to the Applicant's barn.

[31] Costs are fixed at \$3,500, all-inclusive.

Justice C. Boswell

Date: December 8, 2025