

COURT OF APPEAL FOR ONTARIO

CITATION: One Clarendon Inc. v. Finlay, 2024 ONCA 153

DATE: 20240226

DOCKET: M54287 (COA-23-CV-0492)

Feldman, Benotto and Roberts JJ.A.

BETWEEN

One Clarendon Inc.

Plaintiff (Defendant by Counterclaim)
(Moving Party/Respondent)

and

Kathleen Finlay and John Finlay also known as Richard Finlay and J.R. Finlay

Defendants (Plaintiffs by Counterclaim)
(Responding Parties/Appellants)

Kathleen Finlay and John Finlay, appellants acting in person

Sanj Sood and Matthew Helfand, for the respondent

Heard: in writing

On appeal from the order of Justice William Black of the Superior Court of Justice, dated March 30, 2023.

COSTS ENDORSEMENT

[1] The appellants are tenants in a building owned by the respondent landlord. As a result of very significant rent arrears and the ongoing refusal of the tenants to pay rent, the landlord brought an action in the Superior Court which is waiting to be tried. In the interim, the landlord moved for an order compelling the tenants to

pay ongoing rent and rental arrears pending trial, and for an interim order pending the return of the motion.

[2] An interim order was made by Black J. which required the tenants to pay ongoing rent and arrears on a schedule. The tenants first sought leave to appeal the interim order to the Divisional Court, then abandoned that application and filed a Notice of Appeal to this court. In response, the landlord filed a Motion to Quash the appeal on the basis of lack of jurisdiction. That motion, scheduled for July 3, 2023, was adjourned by the court at the request of the tenants, but on terms that they pay rent during the term of the adjournment. The tenants then elected to abandon the appeal to this court.

[3] The landlord seeks costs of the motion to quash and of the adjournment. Its Bill of Costs shows costs calculated on each of the full indemnity, substantial indemnity, and partial indemnity scales, and its submission is that it is entitled to full indemnity costs, based on the delaying conduct by the tenants of the court proceeding, coupled with their failure to pay any rent while continuing to live in the premises. The tenants' position is that the landlord should be deprived of any costs, on the basis of negative allegations they make against the landlord and its counsel.

[4] The landlord is entitled to its costs of the proceedings in this court. Partial indemnity costs are the norm in this court. While the tenants' conduct

appears to be abusive of the system, that issue is better addressed in the context of the hearing in the Superior Court.

[5] Costs of the proceedings in this court are payable forthwith by the tenants to the landlord in accordance with the amount claimed in the Bill of Costs on the partial indemnity scale in the amount of \$9,045.66 inclusive of disbursements and HST.

“K. Feldman J.A.”
“M.L. Benotto J.A.”
“L.B. Roberts J.A.”