



**Amended Order under the  
Residential Tenancies Act, 2006**

**Citation:** Oz v Shearer, 2023 ONLTB 56224

**Date:** 2023-08-15

**File Number:** LTB-L-074093-22-AM

**In the matter of:** 24 DON HADDEN CRESCENT  
SUNDERLAND ON L0C1H0

**Between:** Eran Oz

**And**

Jenna Shearer  
Charles Shearer



Landlord

Tenant

Certain of the Determinations have been amended to reflect typographical errors identified in a Request to Amend Order submitted on September 14, 2023.

Eran Oz (the 'Landlord') applied for an order to terminate the tenancy and evict Jenna Shearer and Charles Shearer (the 'Tenants') because: (a) the Tenants transferred occupancy of the rental unit without consent; (b) the Tenants were consistently late in paying rent; and (c) the Tenants substantially interfered with the Landlord by not paying water bills.

This application was heard by videoconference on July 24, 2023. The Landlord and the Tenant attended the hearing. Daniel Greanya represented the Landlord. I heard evidence from the Landlord and Charles Shearer.

**Determinations:**

1. This application was filed on July 9, 2021 as TEL-18713-21. The current file number was assigned when the application was migrated to the TOP file management system.
2. There are two parts to the application: (a) an A2 application in which the Landlord has asked for a determination that the Tenants transferred occupancy of the rental unit without consent and that the LTB terminate the tenancy effective July 1, 2021; and (b) an L2 application based on the assertion the Tenants have been persistently late in paying rent.
3. There are three other applications between the Landlord and the Tenants<sup>1</sup>: LTB-T-078649-22 (formerly TET-03929-19), LTB-T-076968-22 (formerly TET-05664-19) and LTB-L-075752-22 (formerly TEL-14131-20)<sup>2</sup>. Those applications appear to have been resolved by an order issued on January 4, 2023 (the 'Hearing Order'). The Tenants appealed the

<sup>1</sup> There appear to have been three other applications—TEL-97792-19, TET-95269-18 and TET-96270-18 that were resolved by an order issued on June 12, 2019—See *TEL-97792-19 (Re)*, 2019 CanLII 87815 (ON LTB).

<sup>2</sup> In those applications Jennifer Oz is identified as a landlord. Ms Oz is also party to the applicable tenancy agreement. I do not know why Ms Oz is not a party to this application. There was, however, no request made to add her as a party.

Hearing Order to the Divisional Court—Court File DC-23-00001351-0000. The Divisional Court has not yet determined the appeal.

## **A2 Application—Transfer of Occupancy**

4. On September 4, 2017, the Landlords and the Tenants entered into a written tenancy agreement for the unit for a one-year period beginning December 1, 2017<sup>3</sup>. The tenancy agreement has provisions restricting assignment and subletting that parallel sections 95 and 97 of the RTA.
5. The tenancy agreement includes a ‘quiet enjoyment’ covenant that provides that, so long as they pay rent, the Tenants ‘may peaceable (sic) possess and enjoy the rental unit for the term and the Landlord[s] shall not harass, obstruct, coerce, threaten or interfere’ with the Tenants. The tenancy agreement provides explicitly that the Tenants are permitted to have overnight guests on an occasional basis.
6. Mr. Oz testified that when he visited the rental unit sometime in the Summer of 2021, he discovered that other people were living there. Mr. Oz’s evidence was that he did not engage with the individuals residing in the unit and appears to have filed this A2 application based on his understanding that occupancy of the unit had been transferred to them by the Tenants.
7. Mr. Shearer testified that: (a) as a result of the (ongoing) dispute between the Landlord and the Tenants, the Tenants moved out of the unit in about July of 2019; (b) the Tenants lived in a rental property until about March of 2021 at which point they moved back to the rental unit and lived there until they purchased a house in Port Perry, Ontario in about June of 2021; (c) the Tenants have lived in their (owned) house in Port Perry since June of 2021; and (d) Mr. Shearer visits the rental unit regularly and occasionally stays there overnight.
8. Mr. Shearer also testified that the Tenants intend to move back to the rental unit once the issues with the Landlord are resolved. When asked under cross-examination to reconcile that assertion with the fact that the Tenants have purchased the house in which they live, Mr. Shearer explained that the unit is closer to his work and the Tenants intend to rent out their (owned) home once they move back to the rental unit. Mr. Shearer further explained that he believed that the Tenants could rent their (owned) home for more than they pay in rent for the unit.
9. In terms of other individuals living in the unit, according to Mr. Shearer: (a) the Tenants allowed individuals to live in the unit from July to September of 2021 while those individuals were looking for permanent accommodations; (b) the Tenants allowed different individuals to move into the unit shortly before I heard this application on July 24, 2023; and (c) the Tenants have no intention of allowing anyone to live in the unit through the winter months as a result of issues they assert exist with the unit and were raised on their tenant applications— LTB-T-078649-22 and LTB-T-076968-22.
10. Mr. Shearer’s evidence was that the Tenants charged the individuals who lived in the unit less than the rent they must pay to the Landlord under the tenancy agreement.

---

<sup>3</sup> Ms Oz is also identified on the tenancy agreement as a landlord.

11. While there is an issue with the payment of utilities—which I am resolving by making an order that the Tenants pay the utilities going forward—the Tenants have paid<sup>4</sup>, and continue to pay, rent as required by the tenancy agreement.

12. The relevant section of the RTA is section 100, which says:

*100 (1) If a tenant transfers the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a subletting authorized under section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.*

*(2) An application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy.*

13. The A2 application cannot be determined based on any transfer of occupancy to the individuals currently living in the unit. They were not living in the unit when this application was filed and an application under section 100 is based, in my view, on a specific transfer of occupancy. I must determine whether the Tenants had transferred occupancy of the rental unit to the individuals the Landlord found living in the unit in the Summer of 2021.

14. The essence of a tenancy is the right to exclusive occupation of the rental unit. In exchange for paying rent, the tenant has the right to possess and occupy the rental unit to the exclusion of all others, including, subject to the RTA, the landlord. **[See *Ocean Harvesters Ltd. v. Quinlan Brothers Ltd.*, 1974 CanLII 149 (SCC) and *Keith Whitney Homes Society v. Payne*, 1992 CanLII 7691 (ON SC)]** The landlord has the right, again subject to the RTA, to determine who will have exclusive occupation of the rental unit. A tenant who wishes to transfer the tenancy—the right to exclusive occupation of the unit—must obtain permission from the landlord or an order from the LTB. **[See ss. 95, 97 and 98]**

15. The purpose of section 100 is to protect a landlord's: (a) expectation that the tenant will retain a sufficient level of interest in the unit; and (b) right to approve of anyone who wishes to take over the tenancy. **[*Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 21]** Essentially, section 100 provides a landlord with a remedy where the tenant does not respect the landlord's rights under sections 95 and 97 of the RTA.

16. The test under section 100 is not whether a tenant has abandoned the rental unit. It is whether they have transferred occupancy of the unit. **[*Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 17]**

17. There is nothing in the RTA that requires a tenant to live in a rental unit or that prohibits a tenant from having another home. There is also nothing in the RTA that prohibits a tenant from having roommates or guests, even paying roommates or guests. **[See, for example, *Hines v Law Rootes*, 2022 CanLII 80817 (ON LTB), *Shalaev v Talero*, 2022 CanLII 122591 (ON LTB) and *TSL-42098-13 (Re)*, 2013 CanLII 55624 (ON LTB) and *TNL-30607 (Re)*, 2009 CanLII 79927 (ON LTB)]** What the RTA prohibits is the transfer of occupancy of a rental unit without complying with sections 95 or 97 of the RTA.

---

<sup>4</sup> Mr. Shearer asserts that the Tenants 'voided' the Hearing Order by paying all of the rent that was found to be owed.

18. On an application under section 100, the LTB must consider whether there is someone else who occupies the unit on a permanent basis and who ‘carried out all an ordinary person’s living activities’ at the unit. [***Samuel Property Management Ltd. v. Nicholson, 2002 CanLII 45065 (ON CA), para 24***]
19. Where the tenant and another person both occupy a rental unit, it is a question of fact and degree whether there has been a transfer of occupation from the tenant to the other person. [***Samuel Property Management Ltd. v. Nicholson, 2002 CanLII 45065 (ON CA), para 23***] The LTB must consider the facts of each case and determine whether the other person has come to have a greater connection to the unit than the tenant—whether the person is, by any measure other than being party to a tenancy agreement and paying rent to the landlord, the ‘tenant’. [***See, for example, TSL-12299-19 (Re), 2020 CanLII 31426 (ON LTB) and Mayfair Mansions Holdings Inc v Tenant, 2021 CanLII 88092 (ON LTB)***]
20. In this case, I am unable to find that there was a transfer of occupancy from the Tenants to the individuals whom the Landlord found living in the unit two years ago. The uncontroverted evidence of Mr. Shearer is that the Tenants permitted the individuals to stay in the unit for a short time while they secured permanent housing. Based on that evidence, I conclude that the individuals were the temporary guests of the Tenants, albeit paying guests, and there was no transfer of occupancy by the Tenants—the Tenants simply, in my view, exercised their right as tenants to permit someone else to temporarily stay in the unit as their guests while they were not living there. My conclusion is supported by the fact that the individuals moved out of the unit in September of 2021.

## **L2 Application—Persistently Late**

21. It is appropriate that the L2 be adjourned pending the outcome of the appeal to the Divisional Court. There is no point in the LTB expending (further) resources resolving an application that may be *de facto* decided by the Divisional Court or in circumstances where the Divisional Court may remit the dispute between the parties back to the LTB to be determined<sup>5</sup>. The L2 will be heard by me after the appeal of the Hearing Order is determined together with any application(s) the Divisional Court directs to be re-heard by the LTB.

## **Condition—Payment of Utilities**

22. The Tenants have been paying rent, but not the utilities as required by the tenancy agreement.
23. The Tenants indicated that they intend to preserve the tenancy. To do that, they will be required to pay not only rent, but also the utilities. I appreciate that there is a dispute between the Landlord and the Tenants concerning the past utilities, specifically the water bills. There was, however, no explanation by Mr. Shearer as to why the Tenants are not paying the going-forward utilities.

---

<sup>5</sup> There are already at least four reported decisions of the LTB and the Divisional Court arising out of the (ongoing) dispute between these parties: *TEL-97792-19 (Re)*, 2019 CanLII 87815 (ON LTB), *Oz v Shearer*, 2020 CanLII 119012 (ON LTB), *Oz v. Shearer*, 2020 ONSC 6685 (CanLII) and *Shearer v. Oz*, 2021 ONSC 7844 (CanLII).

24. Subsection 204(1) of the RTA gives me the jurisdiction to include in an order any conditions that I consider to be fair in the circumstances. In my view, it is fair to require that the Tenants pay the utilities going forward as required by the tenancy agreement.

**Applications to be Heard Together**

25. Depending on what the Divisional Court decides, LTB-T-078649-22, LTB-T-076968-22 and LTB-L-075752-22 may come back before the LTB. If they do, I will hear them at the same time as the L2.

**Materials before the LTB**

26. While the LTB's *Rules of Practice* do not require that parties file factums or briefs of law, in cases where the LTB will be considering applications that involve legal issues, it can be helpful for lawyers or legal representatives to file factums or briefs of law. In this case, neither party referred me to any cases decided under section 100 and I was forced to undertake my own legal research.

**It is ordered that:**

1. The A2 application is dismissed.
2. The L2 application is adjourned to a date to be determined.
3. The Tenants shall pay the utilities for the rental unit from and after August 1, 2023. The Tenants shall provide the payments with proof that the utilities have been paid.

**August 15, 2023**

**Date Issued**

**September 26, 2023**

**Date Amended**



---

E. Patrick Shea  
Vice Chair, 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.