



Order under Section 100 Residential Tenancies Act, 2006

Citation: SINGH v TAYLOR, 2024 ONLTB 19433

Date: 2024-03-21

File Number: LTB-L-012708-23

In the matter of: 83 IRVING PLACE
LONDON ON N5V2H6

Between: Inderjit Singh
Ruby Cabral
Jose Cabral

and

Katherine Annette Taylor
Antoinetta Maria Koolen

and

Karissa Jones



Landlords

Tenants

Occupant

Inderjit Singh, Ruby Cabral and Jose Cabral (the 'Landlords') applied for an order to terminate the tenancy of Katherine Annette Taylor and Antoinetta Maria Koolen (the 'Tenants') and evict Karissa Jones (the 'Unauthorized Occupant') because the Tenants transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlords' consent. The Landlords also applied for compensation by the Unauthorized Occupant for the use of the rental unit.

This application was heard by videoconference on March 6, 2024.

The Landlords' Legal Representative Jorge Andres Steinmetz, the Landlords, Inderjit Singh ('IS') and Ruby Cabral ('RC'), the Tenants and the Occupant attended the hearing. Kevin Taylor ('KT') testified on behalf of the Tenants.

Determinations:

1. For the reasons that follow, I find that the Tenants did not transfer the occupancy of the rental unit to the Occupant in a manner that was not authorized by the *Residential Tenancies Act, 2006* (the 'Act').

Background Facts

2. On January 9, 2023, the Landlords filed an A2 Application with the Board stating that the Tenants had transferred the tenancy to another person without the Landlords' consent and requesting that the Board terminate the tenancy and evict the unauthorized occupant.

3. An A2 application is founded on section 100 of the Act, which states:

“(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.”

4. It was undisputed that the Tenant, Antoinetta Maria Koolen ('AK'), vacated the rental unit on or about December 10, 2022, and that she is still living with a friend as of the date of the hearing. It was also undisputed that KT continues to pay the rent directly to the Landlords.

The Landlord's Evidence

5. IS testified that on December 17, 2022, he and RC received a call from a distressed AK, who informed them that Katherine Taylor ('KAT') had allowed her daughter to move into the rental unit and had now kicked her out of the rental unit because she was making too much noise. IS testified that she followed up this conversation with an email confirming that she vacated the rental unit on December 10, 2022. In the email, she also states that KAT has not lived in the rental unit for more than two and a half years.
6. IS testified that on December 16, 2022, they received confirmation from London Hydro that the hydro utility for the rental unit was in the name of Karissa Jones ('KJ'). The email confirms that the hydro has been in her name since October 8, 2022. IS testified that although the Landlords were aware that KJ had been staying in the rental unit but had believed it to be only temporary. RC testified that they had also become aware of a large storage container in the driveway of the rental unit and they were concerned about who was staying in the rental unit.
7. The Landlord lead evidence that the neighbour, Barb Villani ('BV'), had confirmed that KAT has not lived in the rental unit for some time now and has been subletting the main floor and the basement to new tenants. The Landlords did not call BV as a witness. Rather, the Landlords provided as evidence a declaration signed by BV stating this information, with no details as to how she knows KAT vacated the rental unit or how she knows the Tenants are subletting the rental unit. The Landlord could have called BV as a witness but chose to rely solely on the written declaration and so I cannot find that the hearsay evidence given by the Landlord was necessary. I therefore do not give this declaration any weight.

The Tenants' Evidence

8. AK testified that at the time she sent the email to the Landlords, she had been hospitalized due to a recent epilepsy diagnosis. She testified that she wrote two emails to the Landlords on December 17, 2022. She testified that the Landlords had asked her to send the emails and that the first email did not contain the information they wanted so they told her what to

write in the email and asked her to re-send it. She testified that she was confused and disoriented at the time and was unsure of what she was writing and for what purpose the Landlords were requesting the information.

9. KAT testified that she has not at any time permanently vacated the rental unit and her primary residence is still the rental unit. She testified that she works at a school outside of London, so she often stays with her boyfriend as he lives across the street from the school. KAT provided a copy of her contracts with Thames Valley District School Board in support of this statement. KT also confirmed in his testimony that KAT often stays the night at his place, sometimes six to seven days of the week. KT testified that they have also stayed in the rental unit together on occasion.
10. KAT testified that she communicates with the Landlords with respect to maintenance concerns with the rental unit and has been present for inspections and when repairs were carried out. This was not disputed by the Landlords. In fact, IS and RC both testified that when they inspected the property on various occasions, including after the filing of this application, KAT was present in the rental unit.
11. KAT testified that they rented the storage container to store their belongings from the basement temporarily due to flooding that occurred. She testified that they were concerned about damage to their property at the time and the storage container was removed once the issue that caused the flooding was rectified. KAT submitted photos of the flooding that occurred in the basement in support of this statement.

Analysis

12. The issue to be determined is whether the Tenants transferred the occupancy of their unit.
13. KAT provided substantial documentation in support of her statement that she continues to reside in the rental unit, including copies of her contents insurance for the rental unit, as well as her driver's license, bank statements, mobile phone bills, Canada Revenue Agency contact information, a Record of Employment, and pay stubs, all showing her residence as the rental unit.
14. In all of the circumstances, I am satisfied that the Tenants have not relinquished control of the rental unit to the occupant. There is no indication that KAT has permanently vacated the rental unit. I prefer the evidence of KAT that the storage container was rented to temporarily store belongings to prevent damage as this evidence was supported by photographs of flooding and KAT's testimony of its removal was not challenged by the Landlords. The fact that KAT has continued to pay the rent to the Landlords, communicates maintenance issues and concerns to the Landlords, and has been present during inspections of the rental unit suggests that KAT still has control of the rental unit and the occupant is her guest.
15. The Landlords' Legal Representative submitted that there is a person residing in the rental unit who is not named in the tenancy agreement and is residing in the unit without the consent of the Landlords. Section 100 of the Act requires a transfer of occupancy and

does not authorize the Landlords to terminate the tenancy because KAT has someone living in the rental unit with her without the Landlords' consent.

16. As there has not been a transfer of occupancy, and the occupant is the Tenants' guest and not an unauthorized occupant, the Landlords' application must be dismissed.

It is ordered that:

1. The Landlords application is dismissed.

March 21, 2024
Date Issued



Candace Aboussafy
Member, Landlord and Tenant Board

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