



Order under Section 100
Residential Tenancies Act, 2006

File Number: TNL-27737-20

In the matter of: 1211, 1442 LAWRENCE AVENUE WEST
TORONTO ON M6L1B5

Between: 2491364 Ontario Inc Landlord

and

Bhavisha Modi Tenants

2491364 Ontario Inc (the 'Landlord') applied for an order to terminate the tenancy of Bhavisha Modi (the 'Tenant') because the Tenant transferred occupancy of the rental unit to Parth Modi and Sneha Modi (the 'Occupants') in the manner that was not authorized by the Residential Tenancies Act, 2006 (the 'Act'). The Landlord also applied for an order for compensation for the use of the rental unit.

This application was heard by videoconference on October 6, 2021 at 9:00 am. The Landlord's Legal Representative, David Rubin and the Landlord's Property Manager, Samantha Gibson attended the hearing. The Tenant and the Occupants attended the hearing.

Determinations:

1. This application was filed pursuant to section 100 of the Residential Tenancies Act, 2006 (Act) which states in part:

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.

Time limitation

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

2. I am satisfied that the Tenant transferred the occupancy of the rental unit to her brother and sister, Parth Modi and Sneha Modi, without the Landlord's consent. The Landlord did not enter into a tenancy agreement with these persons.

3. However, I must dismiss this application because it was not filed by the Landlord within 60 days after discovering the unauthorized occupancy in accordance with subsection 100(2) of the Act. Therefore, there is a deemed assignment of the rental unit to Parth Modi and Sneha Modi pursuant to subsection 104(4) of the Act.
4. The definitive meaning of the term “discover” is provided by the Supreme Court of Canada in the case of *Central Trust Co. v. Rafuse*, 1986 CanLII 29 (SCC), [1986] 2 S.C.R. 147 [‘Refuse’] at 224, where Justice Le Dain wrote that “a cause of action arises for purposes of a limitation period when the material facts on which it is based have been discovered or ought to have been discovered by the plaintiff by the exercise of reasonable diligence...”.
5. The Landlord takes the position that this application was triggered by an email from the Tenant on June 23, 2020 requesting a parking spot for her sister Sneha Modi (‘Occupant’) and also the Tenant requesting to be removed from the lease and adding her sister Sneha Modi and her brother Parth Modi as the Tenants to the lease. In the email the Tenant also stated that she moved to Manitoba in 2016 and made all the necessary changes to have herself removed from the lease and her brother and sister added with the previous owner of the rental unit. She stated she was unaware why her name was still appearing as a Tenant.
6. I find that as a result of the email, the Landlord discovered on June 23, 2020, that the unauthorized transfer had taken place. This application was filed on August 24, 2020, which is 62 days after the Landlord discovered the unauthorized transfer.
7. Section 104(4) of the Act states:

104(4) A person’s occupation of a rental unit shall be deemed to be an assignment of the rental unit with the consent of the landlord as of the date the unauthorized occupancy began if,

a) a tenancy agreement is not entered into under subsection (1) or (2) within the period set out in subsection (3);

b) the landlord does not apply to the Board under section 100 for an order evicting the person within 60 days of the landlord discovering the unauthorized occupancy; and

(c) neither the landlord nor the tenant applies to the Board under section 101 within 60 days after the end of the subtenancy for an order evicting the subtenant.

8. Since an application was not brought within 60 days of when the Landlord discovered or ought to have discovered the unauthorized transfer, I find that there is a deemed assignment of the tenancy pursuant to subsection 104(4) of the Act.

It is ordered that:

1. The Landlord’s application to terminate the tenancy is dismissed.
2. There is a deemed assignment of the tenancy pursuant to subsection 104(4) of the Act.

3. Parth Modi and Sneha Modi are Tenants of the rental unit.

October 25, 2021
Date Issued



Trish Carson
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.