



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-26781-20

In the matter of:

TORONTO ON M3A2R5

Between:

35 Valley Woods Road Apartments Limited C/o
Realstar Management Partnership

Landlord

and

Divyang Purohit
Roan Henry
Sanjiv Purohit

Tenants

35 Valley Woods Road Apartments Limited C/o Realstar Management Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Roan Henry (R.H.), Divyang Purohit (D.P.) and Sanjiv Purohit (S.P.) (collectively, the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 1, 2020. The Landlord was represented by Martin Zarnett. Carrie Strangways (C.S.) appeared as a witness for the Landlord. Tenants SP and RH attended the hearing. SP advised that DP is in India and unable to participate.

Adjournment request

1. On November 26, 2020, SP requested that the hearing be rescheduled. SP's reasons for the request were as follows: 1) to allow him time to retain legal representation; 2) to allow his applications to be heard at the same time as the Landlord's application; and 3) because he recently underwent surgery. The request to reschedule was denied as SP had not obtained consent from the other party.
2. At the hearing, SP requested an adjournment for the same reasons as detailed in his request to reschedule. SP's request was denied for the following reasons.
3. I am not convinced that SP made all reasonable efforts to find a lawyer or paralegal to represent him at the hearing. I say this because the Tenant was represented by counsel when he attended a Case Management Hearing for his application on October 28, 2020. The Tenant provided no explanation as to why his counsel was unavailable or whether he made efforts to retain him for the hearing.

4. I do not find it appropriate to adjourn to allow the Tenants' applications to be heard at the same time as this application. I do not believe the Tenants' application will affect the outcome of the application before me.
5. Finally, the hearing platform allows SP the ability to use the chat feature should he wish.

Determinations:

Is RH a tenant or occupant?

1. At the outset of the hearing RH raised the issue of his being named as a party to this application. RH believes that he is the subtenant as he rented a room in the rental unit from SP. Given this, he does not believe he should be named as a party to this application.
2. Section 2(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') defines a Landlord as:

The owner of a rental unit or any other person who permits occupancy of a rental unit, **other** than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit (emphasis added).
3. SP and DP entered into a tenancy agreement with Realstar MP in February 2020 to rent 614, 37B VALLEY WOODS ROAD and moved in on or about March 12, 2020. In April 2020, RH responded to a Kijiji ad for an all-inclusive room to rent and negotiated directly with SP by email and telephone. Prior to moving into the room, however, RH was contacted by the Landlord's Property Manager, CS, to complete a tenant application form. RH did this and was approved by the Landlord to move into the unit.
4. RH signed an acknowledgement, along with the other Tenants, to be a "lease holder".
5. RH paid first and last month's rent directly to SP. However, he reached out to CS after moving in and inquired about paying his rent directly to the Landlord because he did not trust SP to pay on time as he was frequently away.
6. After consultation, CS sent RH an "invitation" to the tenant portal, an electronic format used to communicate with the Landlord and subsequently paid his portion of the rent, including an extra \$91 for a parking spot, to the Landlord through the portal, for the months of May, June and July, 2020.
7. The Act defines a "tenant" as a person who pays rent in return for the right to occupy a rental unit.
8. The Act does not define the term "occupant" however, Guideline 21, of the LTB Interpretation Guidelines defines an occupant as a person who lives in the rental unit at the invitation and at the indulgence of the tenant and under the terms of the tenancy. An occupant has no contractual relationship with the Landlord and any default of rent is the responsibility of the tenant.

9. RH and the Landlord agree that he applied to the Landlord to occupy the unit, signed an acknowledgement of responsibility for rent, paid rent directly to the Landlord through the residents' portal, and signed the Agreement to End the Tenancy (N11) along with SP and DP.
10. Based on the evidence before me, I am satisfied that RH is a "tenant" of the Landlord as defined by the legislation.

Joint Tenancy or Tenancy in Common

11. The Landlord's position is that the agreement between the parties is a joint tenancy, therefore the three tenants are responsible for the full monthly rent making them liable for the rental arrears that resulted from their failure to pay rent.
12. RH argues that he is responsible solely for his portion of the rent from April 16 to Sept 7 because, although he did not expressly state it, he has a tenancy agreement with the Landlord that is separate from the tenancy agreement originally negotiated between the Landlord and SP and DP.
13. From time to time parties may enter into a relationship believing it to be one thing, when, in fact, the actions of the parties reveal it to be something completely different. In this case it is important to consider the nature of the relationship between the tenants and the landlord.
14. Guideline 21 of the LTB Interpretation Guidelines also provides us with some clarification as to the different types of tenancy. In a joint tenancy there is a single tenancy agreement and the tenants are jointly and severally (individually) liable for the payment of the entire rent for the rental unit. In the case of a tenancy in common, while all the tenants are occupying the same premises each tenant in common has a separate tenancy agreement with the landlord even if all tenants have signed one tenancy agreement. Each tenant in common is individually responsible for the payment of his or her share of the rent for the rental unit.
15. An email was sent to the Landlord indicating RH was moving into the unit on April 16, 2020. It is not clear whether this is the same email as is attached to the standard lease however, in response to the email, the Property Manager reached out to RH requesting he complete an application as SP needed the Landlord's permission to "assign or sublease" a room.
16. Once approved by the Landlord, RH was provided with a type written page for his signature:

To Whomsoever it may concern,

*Roan is moving in to the suite- 614 as a new tenant on **April 16th, 2020**. He is to be added as a lease holder along with me and Sanjuv Purohit and will be responsible for rent along with me and Sanjiv Purohit as of **April 16, 2020**.*

Name: **Divyang Purohit** (initialed)

Name: **Sanjiv Purohit** (initialed)

Name: **Roan Henry** (initialed)

17. DP, SP and RH signed the agreement adding RH as a “lease holder.” While the term lease holder is not a defined term under *the ‘Act’*, I accept it to mean a tenant pursuant to a Residential Tenancy Agreement, also known as a Standard Form of Lease, already in place.
18. After moving in, RH reached out to the Property Manager and asked about paying rent directly to the Landlord. He stated that he was uncomfortable about paying his rent to SP because SP was often away from the unit. He was subsequently added to the “Resident Portal” which permitted him to pay his rent by electronic funds transfer directly to the landlord.
19. The Property Manager gave oral testimony that she approved RH as a tenant following the completion of the application by RH, that she engaged in discussions with RH about the difference between a tenant and occupant, that he was aware he was a tenant, and that she granted RH access to the tenant portal by which he could pay his rent.
20. Based on the evidence before me, I find this is a joint tenancy for which SP, DP, and RH are jointly and severally liable for the rent.

The Rent

21. The Tenants have not paid the total rent the Tenants were required to pay for the period from May 1, 2020 to May 31, 2020. Because of the arrears, the Landlord served a Notice of Termination effective June 5, 2020.
22. The Tenants vacated the rental unit on September 7, 2020. The Tenants were in possession of the rental unit when the application was filed.
23. The monthly rent as of July 1, 2020 was \$2,240.80.
24. The Tenants paid \$1,782.00 after the application was filed.
25. SP was offered the opportunity to provide testimony. He had no questions for the parties and nothing to provide relating to the Landlord’s application


It is ordered that:

1. The tenancy is terminated as of September 7, 2020, the date the Tenants gave vacant possession of the rental unit to the Landlord.
2. The Tenants shall pay to the Landlord \$4,066.76 which represents the amount of rent owing and compensation up to September 7, 2020.

3. The Tenants shall also pay to the Landlord \$175.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing* on or before June 4, 2021, the Tenants shall start to owe interest. This will be simple interest calculated from June 4, 2021 at 2.00% annually on the balance outstanding.

May 28, 2021

Date Issued



Dawn King

Member, Landlord and Tenant Board

Toronto North-RO
47 Sheppard Avenue East, Suite 700, 7th Floor
Toronto ON M2N5X5

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

* Refer to section A on the attached Summary of Calculations.

**Schedule 1
SUMMARY OF CALCULATIONS**

File Number: TNL-26781-20

A. Amount the Tenants must pay:

Reasons for amount owing	Period	Amount
Arrears: (up to the termination date in the Notice of Termination)	May 1, 2020 to June 5, 2020	\$986.18
Less the amount the Tenants paid to the Landlord		-\$1,782.00
Plus compensation: (from the day after the termination date in the Notice to the date the Tenants vacated)	June 6, 2020 to September 7, 2020	\$7,206.04
Less the rent deposit:		-\$2,331.80
Less the interest owing on the rent deposit:	March 15, 2020 to June 5, 2020	-\$11.66
Amount owing to the Landlord on the order date: (total of previous boxes)		\$4,066.76
Additional costs the Tenants must pay to the Landlord:		\$175.00
Total the Tenants must pay the Landlord:		\$4,241.76

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