



I hereby certify this is a true copy of an Order dated
APR 25, 2024
Landlord and Tenant Board

**Order under Section 16.1
of the Statutory Powers Procedure Act
and the Residential Tenancies Act, 2006**

Citation: De Greens Family Holdings Corp v Browning, 2024 ONLTB 31010
Date: 2024-04-25
File Number: LTB-L-078826-22-RV-IN4

In the matter of: Main (Lower), 145 Ainslie Street
Cambridge Ontario N1R3P4

Between: De Greens Family Holdings Corp Landlord

And

Evan Browning Tenant
Matthew Barrett

INTERIM ORDER

De Greens Family Holdings Corp (the 'Landlord') applied for an order to terminate the tenancy and evict Evan Browning and Matthew Barrett (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on February 27, and April 10, 2024.

The Landlord's Representative, Jordan Nieuwhof, the Landlord's Agents, Kenneth Green and Narie Green, the first-named Tenant's Representative, Barrett Beaudoin, the second-named Tenant's Representative, Shaun Harvey and the second-named Tenant, Matthew Barrett, attended the hearing.

Determinations:

Preliminary Issue- Joint Tenancy vs Tenancy in Common

1. A motion was made by the Tenants was to have the application dismissed because the tenancy between the Landlord and the Tenants is a tenancy in common, and as such, each Tenant should be treated individually under the *Residential Tenancies Act, 2006* (the 'Act').
2. Both parties agreed that the lease signed by the parties reflects that a joint tenancy had been entered into between the Landlord and the Tenants.
3. The Tenants made submissions that the Landlord was treating the parties as separate tenants. The Tenants submitted an L1/L9 update sheet submitted as evidence for a prior

hearing between the parties showed a calculation of the rent based on the individual tenant's payments since the application had been filed. However, it should also be noted that the update sheet listed both names and listed the total amount owed, without any amount arrears assigned to a specific tenant. The Landlord's submissions were that this was just done to illustrate the imbalance between the payment practices of the two Tenants, and stated that regardless of who paid specific amounts, both Tenants remained jointly liable for any outstanding rent arrears.

4. The Tenants submitted that the Tenants had no relationship prior to the beginning of the tenancy and that the tenancy was born from the Landlord bringing both parties together. No submissions were made regarding whether coercion played a factor in signing this lease agreement, therefore I am satisfied that the Tenants did sign this lease of their own free will, regardless of the absence of a prior relationship.
5. The Landlord submitted that all official correspondence between the parties reflected a joint tenancy. This included notices of rent increases, notices to enter the rental unit and other notices served to the parties seeking a termination of the tenancy.
6. The Tenants submitted that each Tenant had their own bedroom. No evidence was submitted that the Landlord had any say in who took which bedroom, or whether the amount of rent owed was tempered by the size or quality of the room the Tenant possessed.

Preliminary Issue- Analysis

7. For a joint tenancy to exist, four "unities" are required to be present. For one of these unities not to be present would mean that this is not a joint tenancy but a tenancy in common. These four unities are:
 - a) Unity of Title
 - b) Unity of Time
 - c) Unity of Interest
 - d) Unity of Possession
8. The lease agreement meets the burden of the unity of title. The parties entered into the rental agreement at the same time, which meets the unity of time is present.
9. The unity of possession was argued by the Tenants because each person possessed a separate bedroom. However, the unity of possession would be put into question if the Landlord had assigned each Tenant a bedroom and charged an amount of rent related to that bedroom. No evidence was presented that the Landlord had any input on who took which bedroom, nor was there any evidence that rent was pro-rated to the size or type of room each Tenant occupied. Although the Tenants assigned themselves their bedrooms, this in itself does not mean that there is no unity of possession. If the Tenants chose to switch rooms at any time, this would be an issue between the Tenants in which the Landlord would have no input.

10. Based on these reasons, I am satisfied that the Tenants were free to decide who occupied what room in the rental unit without having to seek the permission of the Landlord. Therefore, I find that unity of possession is present in this tenancy.
11. The unity of interest was contested by the Tenants because of the accounting practices of the Landlord. However, no evidence was presented that showed that the Landlord was billing each Tenant separately, and all of the documentation presented at the hearings has shown that all notices and were addressed to both Tenants of the rental unit with any monetary issues presented jointly. This was further illustrated when the Tenant, Evan Browning, sought to terminate his portion of the lease, but was told by the Landlord that unless Matthew Barrett also terminated the tenancy, that Mr. Browning's request would be denied.
12. Therefore, I find that the unity of interest has been met.
13. All four unities are present in this lease agreement; therefore, I find that this is a joint tenancy.
14. Furthermore, since the Tenant, Evan Browning, did not vacate the unit until after the notice was served and the application was made to the Board, both Tenants are equally liable for any outstanding arrears, including any arrears that may have accrued while Mr. Browning was no longer residing at the rental unit.

Adjournment

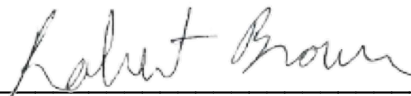
15. The hearing was adjourned due to a lack of time. The next hearing will be scheduled on an expedited basis.
16. This interim order will include a clause stating that any new rent is to be paid on time and in full. Since it has been determined that this is a joint tenancy, 100% of the rent will be due on time and in full until the Board orders otherwise. If the Tenants breach this term, the Board may refuse to hear any further submissions by the Tenants.
17. However, one of the issues brought forward in the Tenants' section 83 submissions was that the Tenants no longer had free access to the laundry facilities in the rental complex, despite this being a condition of the lease agreement. The parties agreed that the Tenants would have their access restored to the laundry facilities immediately.

It is ordered that:

1. The hearing is adjourned to a date to be scheduled by the LTB on an expedited basis.
2. The Tenants shall pay the ongoing rent of \$1,550.00/month to the Landlord by the day it is due until this matter is resolved or the LTB orders otherwise.
3. The Landlord shall restore access to the laundry room to the Tenants immediately.
4. If a party does not comply with the terms stated in paragraphs two and three, the Member may refuse to accept or consider that party's evidence and submissions.

5. I am seized of this matter.

April 25, 2024
Date Issued



Robert Brown
Member, Landlord and Tenant Board

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