



## **Order under Section 100 101 Residential Tenancies Act, 2006**

**Citation:** 13351521 Canada Inc v Lewis, 2024 ONLTB 3187

**Date:** 2024-01-10

**File Number:** LTB-L-070656-22

**In the matter of:** 007, 425 McKenzie Avenue  
London ON N6C1V5

**Between:** 13351521 Canada Inc Landlord

**And**

Joshua Lee Lewis Tenant

**And**

Unauthorized Occupant

Christine Hall

13351521 Canada Inc (the 'Landlord') applied for an order to terminate the tenancy of Joshua Lee Lewis (the 'Tenant') and evict Christine Unknown (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for an order to evict (the 'Subtenant') because the subtenancy ended and the Subtenant continues to occupy the rental unit.

This application was heard by videoconference on November 27, 2023.

The Landlord's agent Charlie Peralta, the Landlord's witnesses Jackson Mayer and Sara Duthler, the Landlord's representative Loryn Lux, , the Tenant and the Unauthorized Occupant attended the hearing.

### **Determinations:**

1. The Landlord brings this A2 application pursuant to [subsection 100\(1\)](#) of the [Residential Tenancies Act, 2006](#) (the '[Act](#)') which states as follows:

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. Subsection 100(2) requires that an application of this nature must be filed within sixty days after the Landlord discovers the unauthorized occupancy.
3. This application was filed on December 22, 2021.
4. The legal test on this type of an application is as follows:
  - a) Firstly, whether the Tenant transferred occupancy of the rental unit to another person without the Landlord's consent as contemplated in subsection 100(1) of the [Act](#)?; and,
  - b) Secondly, whether the Landlord filed this application within sixty days of discovering the unauthorized occupancy as required by [subsection 100\(2\)](#) of the Act?
  - c) Thirdly, whether the Tenant should be granted relief from eviction under s.83 of the Act?
5. For the reasons that follow, I find on a balance of probabilities the Tenant transferred occupancy of the rental unit to another person, Christine Hall, without Landlord consent.
6. The residential complex is a 3-storey walk-up, with 11 units in total. The rental unit contains 2 bedrooms and 1 bathroom. The tenancy commenced in October 2020 and the monthly rent is \$1107.00.
7. The Landlord's agent, Charlie Peralta (CP), testified that on November 10, 2021, he attended at the rental unit and spoke with Christine Hall, who advised him that the Tenant, Joshua Lee Lewis (JL), lives with his girlfriend downtown. CP elaborated he was told that JL merely stores some items in the backroom.
8. At the hearing, the Landlord produced an MTO record search showing the Tenant's vehicle registered to a different residential address and CP stated that JL's vehicle is never seen at the residential complex, as evidence by multiple recent photos of the parking lot. The Landlord also produced a video from February 2022 in which CP met JL outside the rental unit, however JL was unable to locate the key to the rental unit and/or access inside. The

Landlord's witness, Jackson Mayer (JM), testified he attended at the rental unit to provide a quote for a window replacement, and noted there were a few people at the residence, with boxes/bins in the spare room. This visit was followed by an email written from JM to an employee of the Landlord on October 18, 2023, stating:

The room was very full of boxes, shelves, and things so it was difficult to get to the window. If we are awarded the job, we will need to have space so that we can work safely and **since the guy said that he lives out of town**, could you ask him to leave a key so that we are able to get into that room? [emphasis added]

9. Although JM could not identify who he spoke to, the Landlord suggested JL was the person who advised that he was living "out of town".
10. Christine Hall (CH), the occupant, attended at the hearing and testified she lives at the rental unit. She has been friends with the Tenant for many years, and testified she moved into the rental unit in March 2021 on a month-to-month basis, and upon a verbal agreement to pay JL \$1000/month.
11. CH indicates JL likes to travel on his boat and given the transitional nature of his lifestyle, leaves his items at the rental unit. Regardless, CL testified she has access to both bedrooms and denies telling the Landlord's agent that JL no longer lives at the rental unit. Although CH indicated that JL has previously stayed overnight at the rental unit "periodically", she does not believe it has been more than 10 times over the past year.
12. While the onus rests with the Landlord to prove the allegations in the application, JL did not produce any identification/mail to show he still maintains a residential connection to the rental unit. Overall, I found JL's evidence as to his current residence to be somewhat wavering. JL was unsure whether he has stayed at the rental unit more than 10 times over the past year. He also noted he stays "as often as I want", as he often stays with his family/friends and for safety reasons during covid, has maintained a distance from the rental unit. Recently, he indicated he has been staying at a friend's place in Port Stanley Ontario. JL submits that CH is a roommate only and denies the Landlord's assertion he does not have a key and/or has given up control. JL explains the reason his car is never seen in the parking lot is because his original lease (signed with a prior Landlord) does not provide for parking privileges.
13. While I accept that JL continues to store items at the rental unit, I do not find that JL's connection to the rental unit is substantial enough to support a finding that he still maintains a residence at the rental unit. In considering a relatively similar factual set of circumstances, the Court of Appeal of Ontario in *Samuel Property Management Ltd. v. Nicholson*, 2002

CanLII 45065 (ON CA) ("*Samuel v. Nicholson*") noted that mere use of the rental unit is not determinative as to whether a transfer occurred:

[19] Here, on the other hand, two other persons also "occupied" the rental unit. Where a tenant and others occupy a unit, the court must focus on whether a transfer of the occupancy occurred. **The tenant's use of the unit may be relevant, but it is not decisive.**

[20] Thus, in this case, the question is whether Nicholson's two friends were the recipients of a transfer of the occupancy of the unit even though Nicholson at times slept overnight there. The objective and common sense answer to this question is "yes". Although Nicholson could take on a roommate without transferring the occupancy of the unit, that is not what happened here, as the Tribunal recognized. Nicholson and his family have a home elsewhere. When he moved into that home, he handed over to his two friends -- without the knowledge or consent of the University -- the day-to-day occupancy of the rental unit.

14. The rent paid by CH covers nearly the entire monthly rent paid to the Landlord and provides CH with free access to carry on all usual, day-to-day living activities at the rental unit. JL's limited use of the rental unit for storage or very infrequent overnight stays, combined with CH's uninterrupted use and access to the rental unit, points to a change in control. I do not find the rental unit is being used as even a "secondary" home for JL, as his limited usage appears to be for convenience only while his day-to-day living is performed elsewhere. Accordingly, I find JL transferred occupancy of the rental unit to CH without the Landlord's consent.
15. I also find the Landlord filed this application within sixty days of discovering the unauthorized occupancy. Although CH indicate an agent for the Landlord's came in September 2021 to view the rental unit for insurance purposes, I do not find the Landlord became aware that the transfer of tenancy occurred until November 20, 2021, when CP attended at the unit and testified he was advised by CH that JL was living at his girlfriend's house downtown.

### Section 83

16. The next and final issue that must be decided is whether relief from eviction should be granted pursuant to [section 83](#) of the [Act](#). The personal circumstances of the parties must be considered as part of this analysis. The Landlord seeks termination as soon as possible. CH indicated she has already secured alternative accommodations for December 2, 2023 and would be vacating the rental unit shortly. JL requested "as much time as possible" but did not propose a specific date. Rent is current and as noted previously, JL does have items

still in the rental unit. In the circumstances, I find that it would not be unfair to postpone the eviction until February 28, 2024 pursuant to [subsection 83\(1\)\(b\)](#) of the [Act](#).

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated.
2. The Unauthorized Occupant shall move out of the rental unit on or before February 28, 2024.
3. If the unit is not vacated by February 28, 2024, then starting March 1, 2024, the Landlord may file this order with the Court Enforcement Office (the Sheriff), so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord after March 1, 2024.

**January 10, 2024**

**Date Issued**

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Peter Nicholson

Member, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.