



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Alegre Bros. Inc v Melo, 2024 ONLTB 1960

Date: 2024-01-03

File Number: LTB-L-049002-23

In the matter of: A, 204 SAMUELSON ST
CAMBRIDGE ON N1R1K5

Between: Alegre Bros. Inc Landlord

and

Evan Melo Afonso Amorim Tenants

Alegre Bros. Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Evan Melo and Afonso Amorim (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 18, 2023.

The Landlord's Legal Representative, Barrett Beaudoin, and the Tenant, Evan Melo ('EM'), attended the hearing.

As of 10:41am, the Tenant, Afonso Amorim ('AA'), was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the submissions from the Landlord's Legal Representative and the alleged occupant of the rental unit.

Determinations:

Preliminary Issue – Illegal Rent Increase

1. The Landlord's Legal Representative submits that there was an oral tenancy between the Landlord and AA to rent the two-bedroom apartment at a monthly rent amount of \$700.00. He submits that AA moved in EM, without the consent of the Landlord but the Landlord ultimately agreed to add EM as a tenant, at a new monthly rent amount of \$1,400.00.

2. The Landlord's Legal Representative submits that a new tenancy was entered into and thereby the previous oral tenancy had ended when EM moved in, and the parties agreed to add EM to the tenancy and increase the rent.

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3. Based on the evidence adduced at the hearing, AA's existing tenancy had not ended. Since there was already a tenancy with AA, a new rent of \$1,400.00 would have been an illegal rent increase contrary to section 110 of the *Residential Tenancies Act, 2006* (the 'Act'). Even if AA agreed to the increase, the agreement would be void pursuant to section (3)(1) of the Act.
4. I therefore find that the lawful monthly rent is and remains at \$700.00.

Preliminary Issue – Assignment of the Tenancy

5. EM testified that in March 2023, approximately a month after he moved into the rental unit, the Landlord agreed for him to live in the rental unit but only with the permission of AA. It was undisputed that the Landlord was seeking to increase the rent by \$700.00 with EM having moved into the rental unit.
6. Based on the evidence, I do not find that there was a meeting of the minds to add EM as a Tenant and EM was the roommate of AA. The Landlord's Legal Representative submitted that the Landlord reluctantly agreed to have EM move in and this was also confirmed in the testimony of EM.
7. However, it was undisputed that AA moved out of the rental unit, without notice, in July 2023. The Landlord's Legal Representative submits that while the Landlord was aware that AA had vacated the rental unit in July 2023, the Landlord considered EM to be a Tenant under the oral tenancy agreement.
8. Section 100 of the Act provides:

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.

9. I am satisfied that AA transferred occupancy of the rental unit to EM, without the written consent of the Landlord. The Landlord did not enter into a tenancy agreement with EM.
10. Based on the submissions of the Landlord's Legal Representative, I find that the Landlord discovered in July 2023 that the unauthorized transfer had taken place.
11. 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,

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- (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.
12. Since an application was not brought within 60 days of the 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. Therefore, as of July 31, 2023, Afonso Amorim ceased being a tenant and Evan Melo became the sole tenant of the rental unit.

The Arrears

13. The Landlord applies to terminate the tenancy based on a notice of termination that he served for arrears of rent that accrued from April 2023 onwards.
14. The Landlord's application claims arrears for the period of April 2023 to June 2023, based on a monthly rent amount of \$1,400.00. Since the Landlord's application is based on an incorrect rent amount of \$1,400.00, and the Tenants have paid all rent owing for the period ending June 2023 based on the lawful monthly rent of \$700.00, the Landlord's application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

January 3, 2024

Date Issued

Candace Aboussafy

Member, Landlord and Tenant Board

15 Grosvenor St, 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.