



Sinipostolova

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

Citation: Pathway Non Profit Community Dev Inc v Nelson, 2024 ONLTB 8676

Date: 2024-03-07

File Number: LTB-L-026207-23

In the matter of: 1206, 3420 THE COLLEGEWAY
MISSISSAUGA ON L5L5T2

Between: Pathway Non Profit Community Dev Inc Landlord

And

Susuana Nelson Tenant

Pathway Non Profit Community Dev Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Susuana Nelson (the 'Tenant') because the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 8, 2024.

The Landlord's Legal Representative Daria Berezowska, the Landlord's Witness Kenrick Wright, the Landlord's Witness Yansi Duvon, the Tenant Susuana Nelson, and the Tenant's Witness Akintunde Andrews attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 20, 2023, the Landlord gave the Tenant an N5 notice of termination. The notice of termination alleges that the Tenant substantially interfered with the Landlord's interests by renting her unit to an unauthorized occupant for more than her lawful monthly rent.

4. The Landlord's Representative submitted that the rental unit is located in a non-profit housing complex which is partially exempt from the *Residential Tenancies Act (2006)* (the 'Act') pursuant to section 7 of the Act. The Tenant did not contest this. As such, I find that the rental unit is exempt from sections 95-99 of the Act which allow a tenant to assign or sublet their rental unit with the consent of the Landlord. Notably, a tenant must vacate their rental unit in order for the Board to make a finding that the rental unit has been sublet or assigned.
5. Given that assigning or subletting the rental unit is not permitted in this tenancy under the Act, I now turn my mind to the contractual agreement between the parties.
6. The building superintendent, Mr. Kenrick Wright, presented the tenancy agreement between the parties which showed that the only person listed as a tenant was Ms. Nelson. The tenancy agreement also states at paragraph 3.01(ii): "You, as a Tenant, agree: not to assign, sublet, or part with possession of the Unit or any portion of the Unit". Mr. Wright confirmed that the monthly rent charged to the Tenant in March 2023 was \$1,122.00.
7. Under cross-examination, the Tenant confirmed that she had reviewed the lease agreement with the Landlord at the start of the tenancy. According to the Tenant, she was unaware that she was not allowed to sublet the rental unit but confirmed that her initials were on that page of the lease agreement. On a balance of probabilities, I find that assigning and subletting the rental unit are prohibited in this tenancy.

Did the Tenant sublet or have a roommate?

8. For the following reasons, I find that the Tenant sublet the rental unit for the period of March 1, 2023, to March 28, 2023.
9. The Tenant did not dispute that she advertised the rental unit for a monthly rent of \$1,770.00 in March 2023. According to the Tenant, she rented the unit to Daman Singh from for the lawful monthly rent of \$1,122.00 and an additional \$250 for parking. Mr. Singh occupied the rental unit from March 1, 2023, to March 28, 2023, when the Tenant took back possession of the rental unit. The Tenant submitted that she was legally allowed to have an occupant in the rental unit and believes that she did not interfere with the Landlord's interests by renting to Mr. Singh. The Tenant admitted that she did not live in the rental unit at the same time as Mr. Singh.
10. At this point I must make the distinction between a tenant having a roommate and subletting a rental unit. A tenant may have occupants or roommates living with them as long as the tenant is still living in the rental unit and the additional persons do not result in overcrowding. A sublet is defined under section 2(2) of the Act as a situation in which:
 - (a) the tenant vacates the rental unit;
 - (b) the tenant gives one or more persons the right to occupy the rental unit for a term ending on a specified date before the end of the tenant's term or period; and

(c) the tenant has the right to resume occupancy of the rental unit after that specified date.

11. Based on the Tenant's own testimony, the situation before me is that of a sublet, not the addition of a roommate. The Tenant vacated the rental unit, gave Mr. Singh the right to occupy the rental unit, then took back possession of the rental unit on March 28, 2023.

Did the Tenant's sublet interfere with the Landlord?

12. For the following reasons, I find that the Tenant's sublet interfered with the Landlord's reasonable enjoyment of the rental unit, and lawful rights, privileges, or interests.
13. The Landlord's Representative submitted that Landlord is a non-profit housing provider and has a mandate to assist people with low income. The Tenant's actions in renting the rental unit to another person interfere with the Landlord's interests because they prevent the Landlord from renting the unit to someone who does need it.
14. The Tenant testified that she had sent Mr. Singh's contact information and ID to the Landlord and that the Landlord did not object to adding him as an occupant in the tenancy agreement. The Landlord's Representative denied this. The burden of proof is on the Tenant to show, on a balance of probabilities, that she sent Mr. Singh's information to the Landlord and that the Landlord agreed to add him as an occupant. The Tenant did not present any written communications between herself and the Landlord requesting to add Mr. Singh as an occupant to the tenancy agreement. Given the lack of evidence presented by the Tenant on this point, and that the Landlord served an N5 Notice upon discovering Mr. Singh's occupancy of the rental unit, I find that the Landlord did not agree to add him as an occupant.
15. I find that the Tenant's sublet was in breach of the tenancy agreement. Additionally, the sublet prevents the Landlord from achieving their goal of providing assistance to individuals with low income in the form of affordable housing.

Did the Tenant void the N5 Notice?

16. The Tenant did not stop the conduct or activity within seven days after receiving the N5 notice of termination. The voiding period on the N5 Notice is March 20, 2023 – March 27, 2023, and the Tenant testified that she took back possession of the rental unit on March 28, 2023. Based on the Tenant's own admission, I find that the Tenant did not void the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act).
17. The Landlord's Representative confirmed that the Tenant paid her rent in full to December 31, 2023. As such, this order will only require daily compensation starting January 1, 2024.
18. Based on the Monthly rent, the daily compensation is \$36.89. This amount is calculated as follows: \$1,122.00 x 12, divided by 365 days.

19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$480.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$12.26 is owing to the Tenant for the period from January 1, 2023 to January 8, 2024.
21. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from eviction

22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until March 31, 2024, pursuant to subsection 83(1)(b) of the Act.
23. The Tenant testified that her father became ill in March 2023 and that she needed to spend a lot of time at his home to provide him with full-time care. The Tenant wanted to be able to return to the rental unit at any time but also have an occupant helping her to pay the rent, which is the reason why she put out the advertisement to rent the unit in the first place.
24. The Tenant testified that after receiving the N5, she moved back into the rental unit with her family friend, Akintunde Andrews. The Tenant presented a copy of her current driver's license which lists the rental unit address. According to the Tenant, she left all her belongings in the rental unit with Mr. Andrews and returned to visit occasionally, but otherwise went back to her father's home on April 15, 2023. The Tenant confirmed that she has not been living in the rental unit since then, only storing her belongings. As of the hearing date, the Tenant had not yet returned to the rental unit. The Tenant stated that she was planning to move back in full-time within a week after the hearing date because her family had hired a nurse to take care of her father. Mr. Andrews was not aware of the Tenant's plans to move back into the rental unit.
25. I find that the Tenant was in possession of the rental unit from March 28, 2023, to the hearing date. However, the Tenant's actions in storing her belongings in the rental unit and having an occupant live in the unit instead of using it for her own residential use continues to interfere with the Landlord's interests. The rental unit is essentially being used as a cheap storage space instead of being rented to a low-income individual who might otherwise be homeless.
26. In regard to the Tenant's circumstances, the Tenant is currently unemployed and is receiving employment insurance payments in the amount of \$1,500 per month. The Tenant has been living in the rental unit for six years.
27. Given that the Tenant continued to interfere with the Landlord's interests after receiving the N5 Notice, I find it unlikely that the Tenant will correct her behaviour in the future. As such, it would be unfair to the Landlord to grant relief from eviction. The Tenant has not actually been living in the rental unit for over seven months and can stay at her father's home while

looking for a new rental unit. However, given that this is a six-year tenancy, I find a short delay of the eviction to be fair.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 31, 2024.
2. If the unit is not vacated on or before March 31, 2024, then starting April 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after April 1, 2024.
4. The Tenant shall pay to the Landlord \$295.12, which represents compensation for the use of the unit from January 1, 2024, to January 8, 2024.
5. The Tenant shall also pay the Landlord compensation of \$36.89 per day for the use of the unit starting January 9, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$492.26 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the compensation and the cost of filing the application the Landlord is entitled to by \$11.14. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$36.89 per day for compensation for the use of the unit starting January 9, 2024 until the date the Tenant moves out of the unit.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

2024 ONL TB 8676 (CanLII)

March 7, 2024

Date Issued

Kate Sinipostolova
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor, Toronto
ON M7A 2G6

File Number: LTB-L-026207-23

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 of the Tenant 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.

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