



**Order under Section 94
Residential Tenancies Act, 2006**

Citation: Homestead Land Holdings Limited v Cuthbertson, 2024 ONLTB 24857

Date: 2024-04-08

File Number: LTB-L-095432-23

In the matter of: 101, 175 SHAUGHNESSY BLVD
NORTH YORK ON M2J1K1

Between: Homestead Land Holdings Limited Landlord

And

Barry Cuthbertson Tenant

Homestead Land Holdings Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Barry Cuthbertson (the 'Tenant') because:

- the rental unit is the superintendent's premises and the Tenant's employment as superintendent has ended.

This application was heard by videoconference on February 22, 2024.

The Landlord's Representative Crystal Sankey and the Tenant 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 as of April 19, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Superintendent's Unit

The Landlord terminated the employment of the Tenant on October 18, 2023, effective immediately, as superintendent. Vacant possession was required by October 25, 2023, in keeping with s. 93(2) of the *Residential Tenancies Act*, 2006 (the "Act"). No rent was charged for the week after his tenancy was terminated, pursuant to s. 93(3) of the Act. The

Tenant has not vacated the superintendent's premises and more than one week has passed since his employment was terminated.

3. The Tenant's employment as superintendent commenced on November 12, 2012, and a 3 bedroom suite was provided a part of the package.
4. The Tenant was not a tenant in the complex prior to being hired as superintendent.

File Number: LTB-L-095432-23

5. After termination of his employment, the Tenant was offered an extension of the tenancy to November 30, 2023, together with a payment from the Landlord, provided the Tenant vacated the superintendent's unit by November 30, 2023. The Tenant accepted that offer, and funds were paid to him, but he failed to vacate the unit by November 30, 2023.
6. He now claims that he signed that agreement under duress. But he failed to provide any particulars of such an allegation.
7. The Tenant claims his employment was terminated on false/wrongful grounds. He claims he did nothing wrong.
8. I have no jurisdiction to consider whether the termination was unlawful.
9. As a result, the only issue before me is relief from eviction.

Relief from Eviction

10. The Tenant was required to vacate the unit, within one week of termination of his employment.
11. Both parties agreed to an extension of that date to November 30, 2023, yet the Tenant did not vacate, in breach of that agreement.
12. The Landlord claims the failure of the Tenant to vacate has disrupted operations in the high rise building.
13. The new superintendent is now forced to live on the 15th floor, which is not conducive to efficient operations.
14. The Tenant has not been paying the rent.
15. The Tenant and his wife separated last year.
16. The Tenant claims that he was the building manager and not the superintendent. This distinction, if any, is irrelevant: see s2(1) of the Act, and the definition of superintendent's premises.
17. The Tenant wants to keep his unit. He has a family to look after.

18. The Tenant has had 5 months to make alternate arrangements. He was also given an additional payment.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In my view, the hardship here falls on the Landlord. The Tenant breached the extension agreement he signed, and there was no evidence before me of duress other than the Tenant's mere allegation.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. There is no last month's rent deposit.

File Number: LTB-L-095432-23

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 April 19, 2024.
2. If the unit is not vacated on or before April 19, 2024, then starting April 20, 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 20, 2024.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before April 19, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 20, 2024 at 7.00% annually on the balance outstanding.

April 8, 2024

Date Issued

James Campbell
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 of the Tenant expires on October 20, 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.