



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

**Citation:** Minto Apartment Limited Partnership v Otapo, 2024 ONLTB 24711

**Date:** 2024-04-

**05 File Number:** LTB-L-  
048729-23

**In the matter of:** 1012, 21 RICHGROVE DR  
TORONTO ON M9R2L2

**Between:** Minto Apartment Limited Partnership Landlord

**And**

Lateef Otapo Tenant  
Yewande Ajose

Minto Apartment Limited Partnership (the 'Landlord') applied for an order to terminate the tenancy and evict Lateef Otapo and Yewande Ajose (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent.

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 February 12, 2024.

The Landlord's legal representative Faith McGregor and the Tenant attended the hearing.

**Preliminary Issues:**

1. Yewande Ajose submitted that she is not a tenant and should be removed from the application. Evidence was heard from the parties surrounding the circumstances of the tenancy.
2. The evidence was not in dispute that both named-Tenants signed a lease at the beginning of the tenancy. The lease is in both their names.

3. The Landlord's agent, Rowena Tanada, testified that on [date] the Landlord received an N9 Notice of Termination that was only signed by Yewande Ajose. Once the Landlord noticed only one signature, they informed Ms. Ajose that the N9 Notice is void and won't be honoured.
4. Both Tenants testified and had similar stories. Ms. Ajose executed the lease as a pseudoguarantor, and she never intended to reside in the rental unit. It was not made clear to the Landlord that Ms. Ajose would not be living in the rental unit. The Tenants were in a relationship at the time, but that is no longer the situation. As a result, both believe that Ms. Ajose should no longer be considered a tenant.
5. The Landlord's position is that both individuals are named on the lease, Ms. Ajose never properly terminated her lease, and that this order should be made against both named Tenants.
6. In *EAL-92191-20* and *TNL-94159-17*, the Board decided that the participation of all joint tenants is required in order to assign the tenancy or terminate one tenant's interest in the tenancy. I agree with this approach and find that Ms. Ajose's N9 did not lawfully terminate her interest in this ongoing joint tenancy.
7. I have also considered whether Ms. Ajose was a tenant in possession at the time the application was filed. In the Court of Appeal decision *1162994 Ontario Inc. v. Bakker*, 2004 CanLII 59995, the Court examined the definition of "tenant in possession":

[18] Not every dispute over rent arrears can be resolved by the Tribunal in a speedy, fair and efficient manner. I think the requirement that the tenant be "in possession of the rental unit" at the time of the application reflects a determination that rent arrears disputes can be resolved efficiently and fairly through the Tribunal where the tenant at the time of the application continues to have some connection with the rental unit and, therefore, some relationship with the landlord. Situations where that connection has been severed and the relationship gone are best resolved through the more formal court processes.

[19] Some further assistance in defining "tenant in possession" is found by an examination of s. 86(2). That subsection provides that a landlord may be compensated for "the use and occupation" of a rental unit after notice of termination of the lease. A landlord can only be compensated, however, if the tenant is "in possession of the rental unit" when the landlord's application is made. This suggests that a "tenant in possession" is a person who was using or occupying the rental unit at the time of the application but does not necessarily indicate that the phrase is limited to users and occupiers.

[20] Possession is a difficult concept to define. Both in common and legal parlance, it connotes some form of control over the thing said to be possessed: e.g. D. Dukelow, B. Nuse, *The Dictionary of Canadian Law* 2nd ed., (1995) Carswell at p. 916; *The Shorter Oxford English Dictionary*, Vol. II (1973) p. 1635. Clearly, possession in s. 86(1)(b) is not

limited to immediate physical control. For example, a tenant who locks up a rental unit and leaves on an extended vacation, continues to exercise sufficient control over that rental unit so as to qualify as a "tenant in possession" for the purposes of s. 86(1)(b). In my view, possession of a rental unit refers to some form of control over that unit as demonstrated by factors such as access to, use of, or occupation of the unit.

[21] There will be cases, although I would not think a great many, where a determination of whether the tenant was "in possession of the rental unit" at the time of the application will raise a difficult issue. In those cases, the Tribunal will have to decide, based on the evidence, whether there is a sufficient connection between the rental unit and the tenant to permit a finding that the tenant was "in possession" of that rental unit.

8. Based on the evidence before me I find there is a sufficient ongoing connection between the rental unit and Ms. Ajose. Ms. Ajose still has access to the rental unit and has a connection to Mr. Otapo. Ms. Ajose still receives mail and/or information about the property as evidenced by her participation at the hearing. I find that Ms. Ajose was a tenant in possession at the time the application was filed and is properly named.

#### **Determinations:**

9. As explained below, the Landlord has proven on a balance of probabilities the Tenants have been persistently late in their rent and the claim for compensation in the application. The tenancy shall be maintained subject to the conditions contained in this order.
10. Both Tenants were in possession of the rental unit on the date the application was filed.

#### **N8 Notice of Termination**

11. On June 13, 2023, the Landlord gave the Tenant an N8 notice of termination deemed served June 18, 2023. The notice of termination contains the following allegations: the Tenant has been persistently late in their rent every month from July 1, 2022 to June 1, 2023.
12. I find that the Tenant has persistently failed to pay the rent on the date it was due. The rent is due on the 1st day of each month. The rent has been paid late 12 times in the past 12 months. This evidence was uncontested.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. 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 grant relief from eviction subject to the conditions set out in this order pursuant to

subsection 83(1)(a) and 204(1) of the Act. This is in line with the Landlord's requested remedy.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants continues if the Tenants pay to the Landlord new rent on time and in full as it comes due and owing for the period May 1, 2024 to April 30, 2025.
2. If the Tenants fail to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the *Residential Tenancies Act, 2006* (the 'Act') for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
3. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenants do not pay the Landlord the full amount owing on or before April 16, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 17, 2024 at 7.00% annually on the balance outstanding.

**April 5, 2024**

**Date Issued**

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Brett Lockwood

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.

When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

