



## **Order under Section 77 Residential Tenancies Act, 2006**

**Citation:** 325 Saguenay Inc. v Gallant, 2024 ONLTB 15979

**Date:** 2024-03-12 **File**

**Number:** LTB-L-061414-23

**In the matter of:** 10, 325 SAGUENAY AVE OSHAWA  
ON L1J2M9

**Between:** 325 Saguenay Inc. Landlord

**And**

Tim Gallant Tenant

325 Saguenay Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Tim Gallant (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

This application was heard by videoconference on January 3, 2024.

The Landlord's agent, Quentin D'Souza ('QS'), and the Tenant attended the hearing. The Landlord was represented by Suzanne Diamond. TG's partner, Shelli Patterson ('SP'), attended as a witness for the Tenant. Brandy Fallowfield ('BF'), the Landlord's property manager, attended as a witness for the Landlord.

### **Determinations:**

1. The Tenant gave the Landlord notice to terminate the tenancy and then the parties agreed to terminate the tenancy but the Tenant did not move out of the rental unit by the termination date. The tenancy is terminated effective June 30, 2024.

Tim Gallant ('TG') is the only tenant

2. The Tenant argued that he is not the only tenant, and that his spouse, SP, should be considered a tenant because she has resided at the property for many years. Only TG signed the notices of termination N9 and N11 and he argued that these notices are invalid because SP didn't sign them.
3. The Tenant testified that he signed many leases throughout the years as the rental complex changed ownership from time to time. He suggested that he can't be the only tenant and that SP must have signed some of them, but did not provide any leases or other documentary evidence to support this assertion. His position was that SP has been his common-law partner for over 4 years and has resided at the property as a tenant. He also argued that his daughter, has always been on the lease because she has resided there for a long time.
4. The Landlord's evidence was that there was only one tenant – Tim Gallant. The Landlord's property manager, BF, testified that her paperwork always indicated that only TG was the Tenant. The Landlord submitted a "Tenant Acknowledgement" form that TG signed on September 16, 2021 after the Landlord purchased the property. The form does not mention any other tenants. It was BF's evidence that she asked all tenants to sign these acknowledgements and that no other resident of the rental unit was identified as a tenant at the time.
5. SP's evidence was that she dealt with the Landlord directly on multiple occasions. The Landlord did not dispute this evidence but maintained their position that SP has never been a tenant. The Landlord dealt with SP as an occupant.
6. SP and TG did not explain why TG was the only person who signed the N9 form that they prepared and filled out themselves if they believed that he was not the only tenant.
7. Based on all of the evidence adduced at the hearing, I find that it is more likely than not that TG is the only tenant.
8. The Landlord's evidence was internally consistent and supported by documentary evidence. The Tenant's Acknowledgement Form and the Tenant's own N9 support this conclusion in the sense that TG was the only one who TG and SP apparently thought needed to sign it.
9. On the other hand, the Tenant's evidence was inconsistent. The Tenant did not provide any of the many leases he says he signed throughout his tenancy. He also seemed confused by the difference between a tenant and a person who might reside in a rental unit as an occupant. His position seemed to be that any

person residing at a property automatically becomes a tenant. During his testimony he suggested that his daughter should also be considered a tenant in addition to SP. I also note that TG has occupied the rental unit for over a decade, while SP has been a resident for a much shorter period of time.

The Tenant signed an N9 and an N11

10. Other than the disagreement over the identity of the Tenant(s), the parties did not dispute the validity of the notices that gave rise to this application.
11. The Tenant first gave the Landlord notice to terminate the tenancy effective July 31, 2023 ('N9'). TG signed it on June 30, 2023.
12. The Tenant subsequently asked the Landlord for a few additional days to move. As a result, the parties signed an agreement to terminate this tenancy effective August 2, 2023 ('N11'). TG signed it on July 2, 2023 and QS signed it on July 31, 2023.
13. TG and SP explained why they gave the notices and why they subsequently decided to stay at the rental unit.
14. TG's evidence was that there are 6 people living at the rental unit and they wanted to find a larger, more suitable, unit to move into. The Tenant currently has to rent a storage unit to keep some of the family's belongings. They still feel "crammed" at the rental unit.
15. In July 2023 TG and SP found a house they decided to move into. The rent was to be \$3,400 a month and they intended to pay half the rent as they would share the new rental with family. TG and SP received the keys to the house but were unable/unwilling to move in because of pest infestation at the property. They attempted to resolve the issue themselves by placing some traps, and by working with the owner of that property but were ultimately unsuccessful.
16. After TG and SP decided not to move into the new property, they tried looking for alternative accommodations but didn't find anything suitable. They decided to stay at the rental unit for the time being.
17. I find that there was a valid agreement to terminate this tenancy in accordance with s. 37(3) of the Act, and that the Tenant did not move out of the rental unit by the termination date set out in the notice.
18. Since the Tenant did not move out of the rental unit by the termination date, the Landlord was required to file the application to obtain vacant possession.

Therefore, the Tenant is responsible for paying the Landlord \$186.00 for the application filing fee incurred.

Relief from eviction

19. I have considered all of the disclosed circumstances in accordance with subsection 83(1) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
20. The Landlord did not present any evidence of hardship that would justify terminating this tenancy on an urgent basis. The Landlord is simply looking to enforce the agreement the parties reached to have this tenancy terminated and is willing to accept delay.
21. TG requested relief from eviction for himself and for his family. He has resided at the rental unit for over a decade. The rent he currently pays is below market and while he would like to find a bigger place, he has struggled to find anything they could afford. Finally, it was his evidence that his 12 year-old needed to stay at the property so that she wouldn't have to leave her school district.
22. I have considered denying eviction altogether, but I find that it would be unfair to do so. The Tenant initiated termination of this tenancy on his own volition without any misrepresentation or inducement by the Landlord. While I sympathize with the Tenant's circumstances, he entered into a legally binding agreement and understood that this tenancy was going to be terminated as a result. It would be unfair to the Landlord to invalidate this agreement to terminate this tenancy because the Tenant ultimately decided not to move into the new unit they expected to move into. The Landlord would not have the ability to get out of this N11 if there was a slight change in its circumstances.
23. In light of all of the circumstances presented at the hearing, I am granting this lengthy delay from eviction so that the Tenant and his family can move after the end of the school year and so that they have additional time to find alternative accommodation. This is a long-term tenancy and there are 6 people residing at the rental unit.

**It is ordered that:**

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2024.

2. If the unit is not vacated on or before June 30, 2024, then starting July 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 July 1, 2024.
4. The Tenant shall also pay to the Landlord \$186.00, for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 23, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 24, 2024 at 7.00% annually on the balance outstanding.

**March 12, 2024**

**Date Issued**

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Vladimir Nikitin

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 1-888-3323234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on January 1, 2025 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.

