



**Order under Section 100
Residential Tenancies Act, 2006**

Citation: Peel Housing Corporation v Etaluku, 2024 ONLTB 8125
Date: 2024-01-31
File Number: LTB-L-010235-23

In the matter of: 105, 10 Knightsbridge Road Brampton
ON L6T5L6

Between:	Peel Housing Corporation O/A Peel Living	Landlord
	And	
	Jaro Etaluku	Tenant
	And	
	Freeman Etaluku	Unauthorized Occupant

Peel Housing Corporation O/A Peel Living (the 'Landlord') applied for an order to terminate the tenancy of Jaro Etaluku (the 'Tenant') and evict Freeman Etaluku (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for compensation by the Unauthorized Occupant for the use of the rental unit.

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

Only the Landlord's Agent Susan Drakes and the Landlord's Legal Representative Kailee Trigiani attended the hearing.

As of 9:58 a.m. neither the Tenant nor the Unauthorized Occupant was 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 Landlord's evidence.

Determinations:

1. The Tenant transferred the occupancy of the rental unit to the Unauthorized Occupant in a manner that was not authorized by the *Residential Tenancies Act, 2006* (the 'Act'). The Landlord did not enter into a tenancy agreement with this person.
2. Section 100 of the Act speaks to the unauthorized transfer of occupancy of a rental unit by a Tenant to another person and a landlord's right to evict a tenant and a person to whom occupancy of the rental unit was transferred. This section reads as follows:

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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.

3. The Tenant was the Superintendent of the residential complex and the rental unit is the Superintendent's premises. The Tenant's employment as the Superintendent ended in September 2022.
4. On October 13, 2022, the Landlord discovered Freeman Etaluku was occupying the rental unit. The Landlord had not entered into a tenancy agreement with this person. The Landlord filed the application within 60 days of this discovery.
5. Section 95(9) of the Act states:

This section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual or statutory, but does not apply with respect to a tenant of superintendent's premises.

6. Since the rental unit is the Superintendent's premises, pursuant to section 95(9) of the Act, the Tenant was not permitted to transfer occupancy of the unit to Freeman Etaluku.
7. Based on the uncontested evidence of the Landlord, I find on a balance of probabilities, the Tenant transferred occupancy of the rental unit to Freeman Etaluku in a manner not authorized by the Act. As such, I find Freeman Etaluku was an Unauthorized Occupant of the rental unit.
8. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed. The Unauthorized Occupant vacated the rental unit on December 16, 2022. Therefore, the Landlord's application for eviction is moot.

Daily Compensation

9. Section 100(3) of the Act read as follows:

A landlord who makes an application under subsection (1) may also apply to the Board for an order for the payment of compensation by the unauthorized occupant for the use and occupation of the rental unit, if the unauthorized occupant is in possession of the rental unit at the time the application is made.

10. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant.
11. The Unauthorized Occupant owes the Landlord \$3,250.65 in daily compensation for use and occupation of the rental unit for the period from October 13, 2022 to the December 16, 2022.

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12. Based on the Monthly rent, the daily compensation is \$50.01. This amount is calculated as follows: $\$1521.00 \times 12$ months, divided by 365 days.
13. Since the Landlord became aware of the Unauthorized Occupant, the Tenant and/or the Unauthorized Occupant have not made any payments to the Landlord in compensation for use of the rental unit.
14. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
15. The Landlord is not holding a rent deposit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective December 16, 2022, the day the Landlord gained vacant possession of the rental unit.
2. The Unauthorized Occupant shall pay to the Landlord \$3,250.65 which represents daily compensation for the use of the rental unit from October 13, 2022 to the December 16, 2022.
3. The Unauthorized Occupant shall also pay the Landlord \$201.00 for the cost of filing the application.

4. The Unauthorized Occupant shall pay the Landlord the full amount owing by February 11, 2024.
5. If the Unauthorized Occupant does not pay the Landlord the full amount owing by February 11, 2024 they will owe interest. This will be simple interest calculated from February 12, 2024 at 7.00% on the outstanding balance.

January 31, 2024

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

John Cashmore

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.