



**Order under Section 98
Residential Tenancies Act, 2006**

Citation: Patrick v 1248153 Ontario Limited, 2024 ONLTB 16942

Date: March 21, 2024

File Number: LTB-T-058088-23

In the matter of: 501, 5 Ann Street
Mississauga Ontario L5G3E8

Between: Janine Patrick Tenant

And

1248153 Ontario Limited Landlord

Janine Patrick (the 'Tenant') applied for an order determining that 1248153 Ontario Limited (the 'Landlord') arbitrarily or unreasonably withheld consent to the assignment or sublet of the rental unit to a potential assignee or subtenant.

This application was heard by videoconference on January 4, 2024.

The Tenant, the Landlord's legal representative, Sabrina Sciulli, and the Landlord's Property Manager, Anca Moldoveanu (A.M.) attended the hearing. Also in attendance was the Tenant's current proposed assignee, Jennifer Liantzakis.

Determinations:

1. The parties do not dispute that on April 18, 2023, the Tenant sent a written request to remove her mother, Kerry Patrick (K.P.) from the lease and to assign her tenancy to a roommate. The Tenant's letter states that Pryia Ganesan (P.G.) has been an occupant of the rental unit since July 2022 and holds employment with Grant Thornton LLP. The letter also indicates that P.G. would provide her record of employment and recent paystubs. The

Tenant states that if the Landlord has any questions or requires further information to please contact her. This letter is electronically signed by both the Tenant and her mother.

2. I am satisfied that the Tenant's written request constitute a request to assign the tenancy to a specific person or potential assignee as contemplated by section 95(3) of the *Residential Tenancies Act, 2006* (the 'Act')
3. On April 20, 2023, the Tenant received a response to her request via email from the Landlord's Property Administrator, Dawn Lillicrop (D.L.). The email was submitted by the Tenant and states the following:

I have received your recent letter requesting to assign your unit to Pryia Ganesan.

Please be advised that Pryia would have to apply for the apartment at the new market rent and be approved to remain in the unit.

She can contact the building super to pick up the forms and rental application.

4. On April 26, 2023, the tenant replied to the email above asking for clarification on the Landlord's response. The Tenant stated that her understanding of an assignment was that it is a transfer of a rental agreement from the original tenant to the new tenant and it includes all the elements of the original lease.
5. D.L. responded by email on April 27, 2023 and advised the Tenant that she cannot assign her unit because she has a month to month tenancy and that, as per the lease agreement, assignment is only available under the first fixed term of the lease if the Tenant was unable to fulfill the full term.
6. The Tenant replied to this email and informed D.L. of subsection 95(9) of the *Act*, which states "this section applies with respect to all tenants, regardless of whether their tenancies are periodic, fixed, contractual, or statutory". In the Tenant's email she also advises the Landlord that P.G. is willing to pay an increase of rent.
7. The lease agreement was submitted by the Landlord. Clause 15 of the tenancy agreement states that a request to assign must be made in writing and that written leave to do so must be received from the Landlord. The lease also states that the Landlord may charge an administration and processing fee in respect of the expenses associated with such a request. The lease agreement does not state that tenants may not assign their lease after the first fixed term has expired. In any event, I agree with the Tenant's assessment that subsection 95(9) of the *Act* allows assignments to fixed term and month to month lease agreements.
8. On May 3, 2023, the Landlord's Property Manager A.M. emailed the Tenant to advise that the Tenant's request to assign was not approved. They provided the tenant with the option of completing a N9 notice to terminate the tenancy with 60 days notice or to sign a N11 which would allow the Tenant to vacate at the end of May without penalties for short notice.

A.M. also states “your friend can contact the building and ask the superintendent for the application forms and apply for this unit at the current market rent”.

9. On the same date, the Tenant replied and asked A.M. to provide her with the reasoning for declining her assignment request. The response to the Tenant’s email was “Is the Landlord’s choice”.
10. On May 4, 2023, the Tenant send another written request to the Landlord in light of the Landlord’s denial of her assignment request. In this letter the Tenant requests to sublet her rental unit to P.G. while the Tenant is away from July 1, 2023 to June 30, 2024. The Tenant provides the employment information for P.G. again and states that employment records and recent paystubs are available.
11. The Tenant testified that while waiting for the Landlord’s response to her request to sublet, she requested a new resident application from the building supervisor so that P.G. could provide further personal details to the Landlord. The Tenant testified that the building supervisor would not provide her with an application form and informed her that unless the Landlord received formal notice of the Tenant’s departure from the property, they would not grant permission for her to have a new tenant application.
12. The Tenant relied on a number of subsequent emails between herself an A.M. On May 12, 2023 A.M. advised the Tenant that the terms of the Landlord’s position had not changed. The Tenant asked for the Landlord’s reasoning and A.M. responded the same day once again with “Is the Landlord’s choice”
13. The Tenant testified that following the Landlord’s refusal to assign or sublet her lease, P.G. left the rental unit in June 2023. The Tenant testified that since P.G.’s departure she has had two other occupants in the rental unit. The Tenant stated that Jennifer Liantzakis (J.L.) arrived in June 2023 and is presently living in the rental unit along with Ruth Burrows (R.B.), who arrived in July 2023. R.B. vacated at the end of September 2023; J.L. remains.
14. A.M. testified that it is the Landlord’s position that no changes will be made to the lease agreement unless the lease is terminated and this is the reason why they refused to remove the Tenant’s mother. A.M. testified that she did not know the reason why the Tenant was looking to assign her lease and found it concerning that the Tenant was asking to remove her mother from the lease at the same time as assigning the lease to someone else. A.M. stated that the Landlord’s employees are responsible for taking care of the property and part of this is knowing who is responsible for their rental units so that they do not lose control of who their lease holders are.
15. A.M. testified that she believes there was a miscommunication between the Tenant and the building supervisor regarding the refusal to provide a rental application to the Tenant. A.M. testified that it is the Landlord’s position that the person requesting the rental application must be the one to come to the office to obtain it. Since the Tenant was asking for the rental application on behalf of P.G., this was the reason why it was refused. The Landlord did not call the building supervisor to testify.

Analysis

16. Section 95(5) of the *Act* states “[a] Landlord shall not arbitrarily or unreasonably refuse consent of a rental unit to a potential assignee under clause (3)(b)”.
17. Based on the evidence and testimony, I find on a balance of probabilities that the Landlord withheld consent to assign and also consent to assign unreasonably.
18. The Tenant provided a written request to assign her tenancy to P.G. The Tenant also provided employment information and advised the Landlord that any further details required would be provided. If the Landlord required the Tenant to complete additional documentation in order to consider the request, as per the lease, the Landlord should have asked the Tenant, but failed to do so.
19. A.M. stated that she did not know why the Tenant wanted to assign her unit and felt uneasy about the assignment given that it came with a request to also remove another lease holder. In my view, the *Act*’s assignment provision contemplates a cooperative “back and forth” process between a tenant who wishes to assign a tenancy and the landlord whose consent is required. If the Landlord had concerns about the Tenant’s proposal, they ought to have communicated those concerns to the Tenant instead of simply denying the request.
20. The Landlord’s emails indicate that their intent is to receive market rent, with the reason for the denial being that it is the Landlord’s choice. Neither of these responses indicate a reasoned decision of why the assignment was denied or inform the Tenant of what she would be required to do in order to obtain consent.
21. For the reasons stated above, I find that the Landlord unreasonably and arbitrarily withheld its consent to assign.

Remedies

22. The Tenant is requesting that the Board allow her to assign or sublet her unit to Jennifer Liantzakis (J.L.) who has been residing in the rental unit since June 2023. There is no evidence before me to suggest there has been any issue with this occupant since she moved in.
23. The Landlord did not specifically object to the Tenant’s request to assign the rental unit to J.L. rather than P.G., as the Tenant had originally requested. The Landlord also did not submit any evidence to indicate that J.L. would not be a suitable assignee. On the other hand, the Tenant’s uncontested evidence is that J.L. has been living in the unit for quite some time without issue.
24. In these particular circumstances, I am satisfied on a balance of probabilities that it is appropriate to authorize the assignment as requested. The Landlord’s failure to act reasonably regarding the assignment request has resulted in the original assignee no longer being interested in the unit, there is evidence that the new assignee has lived in the

unit without incident, and there was no evidence before the Board suggesting that assigning the tenancy to J.L. would be inappropriate.

It is ordered that:

1. The assignment of the rental unit to Jennifer Liantzakis is authorized effective April 1, 2024.
2. The Landlord shall pay the Tenant \$53.00. This amount represents:
 - \$53.00 for the cost of filing the application.
3. The Landlord shall pay the Tenant the full amount owing by April 9, 2024.
4. If the Landlord does not pay the Tenant the full amount owing by April 9, 2024, the Landlord will owe interest. This will be simple interest calculated from April 10, 2024 at 7.00% annually on the balance outstanding.
5. The Tenant has the right, at any time, to collect the full amount owing or any balance outstanding under this order.

March 28, 2024
Date Issued

Melissa Anjema
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.

