



Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Noori v Khan, 2024 ONLTB 22771

Date: 2024-04-29

File Number: LTB-L-081201-23-RV

In the matter of: 779 KLEINBURG DR
LONDON ON N5X0K1

Between: Aqila Noori Landlord

And

Umar Khan Former Tenant

Carla Kennedy Tenant

Review Order

Aqila Noori (the 'Landlord') applied for an order to terminate the tenancy and evict Umar Khan and Carla Kennedy (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

This application was resolved by order LTB-L-081201-23 issued on October 25, 2023.

On November 1, 2023, Carla Kennedy (CK) filed a motion to set aside the order issue don October 25, 2023.

This motion was resolved by order LTB-L-081201-23 issued on February 5, 2024.

On February 5, 2024, Carla Kennedy (CK) requested a review of the order issued on February 5, 2024.

The review request was heard by videoconference on March 19, 2024.

The Landlord's Representative, Robert Fex and Carla Kennedy attended the hearing. Fatima Rahman, attended as witness for the Landlord.

Determinations:

Review:

1. CK submits the order contains a serious error because it was determined that there was no mail presented which contained her name and address of the rental unit.
2. In paragraph 3 of order LTB-L-081201-23 issued on February 5, 2024, it states as follows:

I allowed Ms. Kennedy post hearing submissions to establish if she had any evidence to support, she lives at this address, either by submitting a driver's licence or utilities bill, something to show she lives at the rental unit. Ms. Kennedy was unable to present any evidence, either at the hearing or post hearing submissions to establish she lives at the rental unit.

3. The Board record shows the Tenant provided post hearing submission on December 18, 2023, on the same day as the hearing. CK provided her driver's license and tax returns for several years all corroborated her address which is the same address as the rental unit. This is relevant evidence which the Member did not consider and seems to be material to the outcome and conclusion reached.
4. I find the order, therefore contains a serious error in finding a fact. CK's post hearing submission relates to a material finding that is wrong and may change the outcome of the order and for this reason the review request is granted.

Preliminary Issue: Is CK a Tenant?

5. Yes. CK is a Tenant of the unit because CK meets the expanded definition of Tenant after Umar Khan, her spouse, vacated the rental unit and/or because the Landlord did not file an application under section 100 of the Act. The Act deems a tenancy is created if the Landlord hasn't applied to the Board to evict the unauthorized occupant within 60 days from the date they became aware the unit was unlawfully transferred.
6. Despite CK's assertion that she signed a tenancy agreement and she's a Tenant, Umar Khan was the only Tenant listed on the tenancy agreement, and I find when the tenancy started CK was not a Tenant but an occupant of the rental unit.
7. CK's status as an occupant however changed to Tenant 60 days after the Landlord became aware CK was occupying the unit after the former Tenant vacated.
8. Consideration was given to both section 3 of O. Reg 516/06 and section 100 of the Residential Tenancies Act.
9. Section 3 of O. Reg 516/06 gives an expanded definition of 'tenant' when the rental unit is the principle residence of the spouse of that Tenant and when a spouse is included in the definition of Tenant; and subsection 3(3) identifies when the spouse is not included in the definition. Subsection 3(3)(3) states, "the tenant who vacated the rental unit was not in arrears of rent at the spouse fails to advise the landlord before an order is issued under section 100 of the act that he or she intends to remain in the rental unit".

10. Section 100 at the Act requires the Landlord to apply to the LTB 60 days after becoming aware of an unauthorized occupant when the Tenant transferred the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or sublet authorized under section 97.
11. Section 100(2) of the Act specifically imposes a 60-day deadline for residential landlords to apply to the LTB after learning of a unauthorized occupant and section 104(4) of the Act deems an assignment of a tenancy if such an application has not been commenced.
12. In this case, there was no evidence led that CK was in arrears when the former Tenant vacated because her spouse paid the Landlord rent. The arrears started after the Tenant vacated and he left the marital home.
13. The former Tenant vacated giving notice to the Landlord twice terminating the tenancy in May 2023 and September 2023, therefore the Landlord was aware the former Tenant vacated the unit. This is also supported by the text message CK received from the Landlord's Agent, Lawangeen Khan on May 20, 2023 at 4:31 pm after the former Tenant vacated. The text informed CK about the first N11 agreement ending the tenancy on May 20, 2023, at which time he asked CK to vacate the rental unit by June 20, 2023. (Evidence Doc #2411909) I
14. I find at this point the CK met the expanded definition of Tenant. Even if I'm wrong, the Landlord was aware that CK did not vacate the unit with her spouse because they told CK she could stay until June 20, 2023. The Landlord did not file an L3 application based on the first N11 Agreement that terminated the tenancy on May 20, 2023, nor did he apply under section 100 of the Act to evict CK, at the time who would have been considered an unauthorized occupant.
15. Instead, the Landlord chose to get the former Tenant to sign a second N11 Form on August 22, 2023, terminating the tenancy on September 30, 2023. At this time the Landlord choose to file an L3 application based on the second N11 Form that they signed. This was not the true substance of the transaction as the Landlord was aware that at least from May 20, 2023 that the former tenant had vacated when he signed the first N11 Agreement as supported May 20, 2023 text from his Agent.
16. Neither the Landlord, the Landlord's Agent or the former Tenant involved in the transaction when the first and second N11 Form were signed, we're at the hearing. As such, it's unknown whether there were any discussions between the Landlord, the Landlord's Agent and former Tenant about leaving CK, and his children in possession of the rental unit after he vacated the unit.
17. I find CK would have met the definition of Tenant as of July 19, 2023, which was 60 days from May 20, 2023 when the first N11 became in effect because the Landlord was aware at least from May 20, 2023 that CK and children were living in the rental unit after the former Tenant vacated. Again this was supported by the text communication by the Landlords Agent, Lawangeen Khan, dated May 20, 2023 at 4:31 pm. Therefore, the

Landlord had 60 days from May 20, 2023, to file an application to evict CK, deemed an the unauthorized occupant at that time. There's no dispute an application under section 100 of the Act did not commence after the Landlord became aware that CK was living in the unit after the former tenant vacated.

18. CK, was the person to whom occupancy of the rental unit was transferred. I find therefore, there's a deemed assignment of the rental unit with the Landlord's consent effective July 19, 2023 which was 60 days after the tenancy terminated on May 20, 2023 pursuant to section 104(4) of the Act which deems CK a Tenant of the rental unit by operation of law.

Motion:

19. Without a hearing, the Board issued an ex parte order LTB-L-081201-23 on October 25, 2023 which terminated the tenancy.
20. L3 applications are resolved ex-parte (without a hearing) in accordance with section 77 of the *Residential Tenancies Act, 2006*, (the 'Act'). Since there is no hearing, this ex-parte process is intended to resolve L3 applications that are based on a clear, valid notice to terminate the tenancy or a written agreement to terminate the tenancy.
21. The first N11 Notice of Termination was signed by the former Tenant in March 2023 well before the second N11 was signed on August 22, 2023 and months after the former Tenant vacated.
22. An agreement signed by the former Tenant cannot terminate the tenancy under section 77 of the Act. Since the Board had no jurisdiction issue an order based on an invalid agreement, the Tenant's (CK) motion must be granted and the order issued on October 25, 2023 must be cancelled.

It is ordered that:

1. The request to review order LTB-L-081201-23 issued on February 5, 2024 is granted.
2. Order LTB-L-081201-23 issued on February 5, 2024 is cancelled.
3. The Tenant's motion to set aside order issued on October 25, 2023 is granted.
4. Order LTB-L-081201-23 issued on October 25, 2023 is cancelled and cannot be enforced.

April 29, 2024
Date Issued

Sandra Macchione
Member, Landlord and Tenant Board

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