



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

Citation: Bellair Investments v Middlebrook, 2024 ONLTB 8135

Date: 2024-02-02

File Number: LTB-L-010189-23

In the matter of: 9, 36 Rosecliffe Ave Toronto
ON M6E1K9

Between: Bellair Investments Landlord

And

Estate of Willy Mae Middlebrook Tenant

And

Tyler Middlebrook Unauthorized Occupant

Bellair Investments (the 'Landlord') applied for an order to terminate the tenancy of Estate of Willy Mae Middlebrook (the 'Tenant') and evict Tyler Middlebrook (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 Irshad Ali and the Landlord's Legal Representative Howard Levenson attended the hearing.

As of 9:42 a.m. neither a representative for 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 Landlord's evidence was the Tenant passed away on September 27, 2022 and there were no other tenants of the rental unit. Pursuant to section 91 of the *Residential Tenancies Act, 2006* (the Act), the tenancy is deemed to have terminated on October 26, 2022, 30 days after the death of the Tenant.
2. The Landlord's property manager, Irshad Ali, testified that on November 4, 2022, it was discovered that Tyler Middlebrook was occupying the rental unit. The application was filed within 60 days of this discovery.
3. Mr. Ali testified Tyler Middlebrook is not listed on the lease agreement and the Landlord has never entered into a tenancy agreement with him. The Landlord has had no contact with Tyler Middlebrook despite having sent him letters.
4. Mr. Ali's evidence was the Landlord received a phone call from Tyler Middlebrook's father in which he stated his son was living in the rental unit. Mr. Ali stated he believed Tyler Middlebrook is the grandson of the Tenant.
5. The Landlord asked Tyler Middlebrook to vacate the rental unit but they have had no contact whatsoever with him.
6. 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:

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.
7. Since the Tenant passed away on September 27, 2022 and the tenancy is deemed to have terminated on October 26, 2022, occupancy of the rental unit could not have been transferred to Tyler Middlebrook in accordance with section 95 of the Act.
8. Based on the uncontested evidence of the Landlord, I am satisfied on a balance of probabilities Tyler Middlebrook is an Unauthorized Occupant of the rental unit. The tenancy was not transferred in a manner authorized by the Act and the Landlord has never entered into a tenancy agreement with the Tyler Middlebrook, the Unauthorized Occupant.
9. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed.

Daily Compensation

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 \$12,522.30 in daily compensation for use and occupation of the rental unit for the period from November 4, 2022 to the January 22, 2024.
12. Based on the Monthly rent, the daily compensation is \$28.14. This amount is calculated as follows: $\$856.00 \times 12$ months, divided by 365 days.
13. Since the Landlord became aware of the Unauthorized Occupant, the Unauthorized Occupant has not made any payments to the Landlord 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.
16. Section 83(1) of the Act requires that I review and consider all the circumstances and consider delaying or denying eviction of the Tenant if it would not be unfair to do so. The Landlord did not apply for an order evicting the Tenant. The application was filed on November 17, 2022, well after the Tenant had passed away and after the tenancy was deemed terminated. Since I have found Tyler Middlebrook in an Unauthorized Occupant of the rental unit and not a Tenant, I do not find section 83 of the Act applies to the present case. Nevertheless, during the hearing I turned my mind to the disclosed circumstances, however the Landlord did not provide any information concerning the Unauthorized Occupant since they have had no contact with him.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective October 26, 2022, 30 days after the Tenant passed away.
2. The Unauthorized Occupant shall move out of the rental unit on or before February 13, 2024.
3. If the unit is not vacated by February 13, 2024, then starting February 14, 2024, the Landlord may file this order with the Court Enforcement Office (the Sheriff), so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord after February 14, 2024.

5. The Unauthorized Occupant shall pay to the Landlord \$12,522.30 which represents daily compensation for the use of the rental unit from November 4, 2022 to the January 22, 2024.
6. The Unauthorized Occupant shall also pay to the Landlord \$28.14 per day for compensation for the use of the unit from January 23, 2024 to the date they move out of the unit.
7. The Unauthorized Occupant shall also pay the Landlord \$201.00 for the cost of filing the application.
8. The Unauthorized Occupant shall pay the Landlord the full amount owing by February 13, 2024.
9. If the Unauthorized Occupant does not pay the Landlord the full amount owing by February 13, 2024 they will owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% on the outstanding balance.

2024 ONLTB 8135 (CanLI)

February 2, 2024

Date Issued

John Cashmore

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on August 14, 2024 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.

