



Order under Section 100 Residential Tenancies Act, 2006

Citation: Renee Management v Madabushi, 2024 ONLTB 5261

Date: 2024-01-31

File Number: LTB-L-002056-23

In the matter of: 211, 102 Guildwood Park Court
East York ON M4C2G8

Between: Renee Management Landlord

And

Ranga Madabushi Tenants
Rajeswari Madabushi

And

Anjaneyulu Kudikala Unauthorized Occupant

Renee Management (the 'Landlord') applied for an order to terminate the tenancy of Ranga Madabushi and Rajeswari Madabushi (the 'Tenant') and evict Anjaneyulu Kudikala (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 9, 2024. The Landlord's agent, Yirmi Basch, and the Landlord's representative, David Ciobotaru, attended the hearing. Tenant Rajeswari Madabushi and the Tenant's support person, Jagadish Manohar, also attended the hearing. As of 2:00 pm the Unauthorized Occupant/Subtenant was not 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 the Landlord's and Tenant's evidence.

Determinations:

1. The Tenant testified that on August 31, 2022 she submitted a request to the Landlord to transfer the occupancy of the rental unit to Occupant Anjaneyulu Kudikala on September 1, 2022. The Tenant testified further that she transferred the occupancy of the unit to the Occupant on September 1, 2022 without authorization from the Landlord, and it was not until mid-September 2022 that the Landlord advised her that they did not consent to the transfer. The Tenant stated that she had transferred the occupancy of the unit on two previous occasions with the Landlord's verbal consent. The Tenant explained that in February 2014 she vacated the unit, transferred her occupancy of the unit to a subtenant, and moved to India to adopt a child, but retained possession of the unit with her

belongings in it. The Tenant confirmed that she has not resided in the unit since February 2014.

2. The Tenant confirmed that her brother pays the Landlord her monthly rent of approximately \$1,000.00; however, she receives \$1,600.00 in rent each month from the occupant/subtenant. The Tenant stated that she wants to retain her tenancy and expects to return to Canada to reside in her unit in four to five months when she anticipated that her child adoption application would be resolved.
3. The Landlord's agent testified that the Landlord did not consent to the Tenant's August 31, 2022 request to sublet the unit given that the Tenant never provided a character reference for the potential subtenant, and therefore, the Landlord was unable to assess the potential subtenant's suitability for occupancy in the unit. The Landlord's agent testified further that the Landlord did not receive the Tenant's sublet request until September 5, 2022, after the Tenant had already transferred occupancy of her unit to the Unauthorized Occupant.
4. The Landlord's representative submitted that the Landlord is seeking a termination of the tenancy, and is seeking to evict the Unauthorized Occupant. The representative submitted further that the Landlord is no longer seeking any daily compensation from the Unauthorized Occupant.

Analysis

5. On the basis of the evidence provided, I am satisfied that the Tenant transferred the occupancy of the rental unit to the Occupant in a manner that was not authorized by the *Residential Tenancies Act, 2006* (the 'Act'). I am satisfied that the Tenant did not receive consent from the Landlord to sublet the unit on September 1, 2022, as required pursuant to s. 97(1) of the Act, and that it was reasonable and not arbitrary for the Landlord to withhold consent of the sublet to the potential subtenant. I find that the Landlord complied with s. 97(2) of the Act. I also find that the Landlord did not enter into a tenancy agreement with the potential subtenant. For these reasons, I find that the Occupant is an Unauthorized Occupant pursuant to s. 100 of the Act.
6. The Unauthorized Occupant was in possession of the rental unit on September 15, 2022, the date the application was filed, and remains in possession of the unit as of the day of this hearing.
7. The application was filed within 60 days after the Landlord discovered the unauthorized occupancy on September 5, 2022, pursuant to s. 100(2) of the Act.

Daily Compensation and Costs

8. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant; however, the Landlord is no longer seeking any daily compensation from the Unauthorized Occupant.
9. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs from the Tenant.

Section 83 Considerations

10. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
11. I am satisfied that the Tenant transferred occupancy of her unit to an Unauthorized Occupant contrary to the Act – without consent from the Landlord. I am not satisfied that the Tenant will resume occupancy of her unit in four or five months, after an almost 10-year absence, or that the Tenant will comply with the Act for future transfers of her occupancy.
12. The Landlord's representative and agent, and the Tenant, did not submit any circumstances that should be considered in a determination of whether to provide the Unauthorized Occupant with eviction relief, nor was the Unauthorized Occupant or their representative present at the hearing to provide submissions with respect to the Unauthorized Occupant's relief from eviction.
13. For the reasons provided in paragraphs 11 and 12 above, I find that it would be unfair to the Landlord to provide the Tenant and the Unauthorized Occupant with complete relief from eviction, conditional relief from eviction, or a postponement of the eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated.
2. The Unauthorized Occupant shall move out of the rental unit on or before February 11, 2024.
3. If the unit is not vacated by February 11, 2024, then starting February 12, 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 12, 2024.
5. The Tenant shall pay the Landlord \$201.00 for the cost of filing the application.
6. If the Tenant does not pay the Landlord the full amount owing by February 11, 2024 she 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

Frank Ebner
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 12, 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.