



## Order under Section 100 Residential Tenancies Act, 2006

**Citation:** Malleum Real Estate Management Corp V Clapp, 2023 ONLTB 80672

**Date:** 2023-12-15

**File Number:** LTB-L-013180-23

**In the matter of:** 5, 159 SOUTHWORTH STREET NORTH  
WELLAND ON L3B1Z1

**Between:** Malleum Real Estate Management Corp Landlord

**And**

Morgan Clapp Tenant

**And**

Clifford Walker Unauthorized Occupant

Malleum Real Estate Management Corp (the 'Landlord') applied for an order to terminate the tenancy of Morgan Clapp (the 'Tenant') and evict Clifford Walker (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 November 16, 2023.

Only the Landlord's agent, Robert Donmoyer ('RD'), attended the hearing.

As of 9:26 a.m. neither the Tenant nor the Unauthorized Occupant were 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. RD said that the Unauthorized Occupant, Clifford Walker ('CW'), currently lives at the rental unit. He said the Tenant was originally the sole tenant of the rental unit.
3. RD said that the Landlord purchased the residential complex on December 6, 2022, and that on December 8, 2022 he sought tenant acknowledgements, provided tenants with information about the Landlord, and posted notices in the common areas of the building.

4. RD said that after having difficulty reaching someone in the rental unit, he finally did on January 5, 2023. CW said that he lived in the rental unit and was the tenant.
5. RD presented a copy of the lease for the rental unit, which he said was provided to the Landlord by the former landlord. It names "Morgan Brice" as the sole tenant of the rental unit for a monthly tenancy beginning in September 2021. The final rent roll for the building that was provided to the Landlord by the former landlord was also entered as evidence. It identified the tenant of the rental unit as "Morgan Clapp". It states that this person moved into the rental unit on June 1, 2020, and there is a notation that the rental unit would be vacant on closing.
6. It is unclear if Morgan Clapp and Morgan Brice are the same person. Regardless, neither the lease nor the final rent roll provided to the Landlord by the former landlord identifies CW as the tenant of the rental unit.
7. RD said that when he spoke with CW, CW was evasive about how he came to be in possession of the rental unit.
8. RD said there was no record of a request to assign or sublet the rental unit, and neither the Landlord nor the former landlord consented to such an assignment or sublet. He believed that the Tenant transferred occupancy of the unit to CW in a manner that was not a lawful assignment or sublet.
9. RD said that CW has never paid rent or made a maintenance request, and incorrectly thought the monthly rent was \$1,200.00. The monthly rent is in fact \$1,000.00.
10. RD said that he asked CW for any evidence that he is a tenant, such as a lease, rent receipts or proof of payment, or text message or emails with the former landlord, but CW did not provide any.
11. RD said he has not been able to contact the Tenant.
12. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed.
13. I find that it is more likely than not that the Tenant transferred occupancy of the rental unit to CW in a manner not permitted by the Act, and that the Landlord first discovered the unauthorized occupancy on January 5, 2023.

#### Daily Compensation

14. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant.
15. The Unauthorized Occupant owes the Landlord \$10,390.08 in daily compensation for use and occupation of the rental unit for the period from January 5, 2023 to November 16, 2023.

16. Based on the Monthly rent, the daily compensation is \$32.88. This amount is calculated as follows: \$1000.00 x 12 months, divided by 365 days.
17. Since the Landlord became aware of the Unauthorized Occupant, the Tenant and/or the Unauthorized Occupant paid the Landlord \$0.00 in compensation for use of the rental unit.
18. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs by the Unauthorized Occupant.

### Section 83 Considerations

19. 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.

### **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 January 5, 2024.
3. If the unit is not vacated by January 5, 2024, then starting January 6, 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 January 6, 2024.
5. The Unauthorized Occupant shall pay to the Landlord \$10,390.08 which represents daily compensation for the use of the rental unit from January 5, 2023 to the November 16, 2023.
6. The Unauthorized Occupant shall also pay to the Landlord \$32.88 per day for compensation for the use of the unit from November 17, 2023 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 January 5, 2024.
9. If the Unauthorized Occupant does not pay the Landlord the full amount owing by January 5, 2024 they will owe interest. This will be simple interest calculated from January 6, 2024 at 7.00% on the outstanding balance.

**December 15, 2023**

**Date Issued**

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Mark Melchers

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 July 6, 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.

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