



**Order under Section 77(8)
Residential Tenancies Act, 2006**

Citation: PARK PROPERTY MANAGMENT INC v TIMOSHENKO, 2023 ONLTB 77087

Date: 2023-11-27

File Number: LTB-L-072201-23-SA

File Number: LTB-T-072041-23

In the matter of: 414, 100 Roehampton Avenue Toronto
Ontario M4P1R3

Between: PARK PROPERTY MANAGMENT INC Landlord

And

YULIA TIMOSHENKO Tenant

PARK PROPERTY MANAGMENT INC (the 'Landlord') applied for an order to terminate the tenancy and evict YULIA TIMOSHENKO (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-072201-23, issued on September 20, 2023. This order was issued without a hearing being held.

Adrian Maliqi filed a motion to set aside order LTB-L-072201-23.

The motion was heard by videoconference on November 15, 2023.

The Landlord's agent Annie Aranjuez, the Landlord's legal representative Anita Sada, the Occupant Adrian Maliqi and the Tenant attended the hearing.

As a determination was required for the parties, both the Tenant and the Occupant met with Tenant Duty Counsel.

Determinations:

Preliminary Issue – Occupant or Tenant?

1. At the onset of the hearing, the Tenant's legal representative sought to dismiss the motion brought by Adrian Maliqi asserting that, as an Occupant, he does not have standing before the Board.
2. The Tenant participated at the hearing to providing testimony in support of the Landlord's position.
3. The Landlord's representative also said the Tenant filed an A2 application on September 3, 2023 to determine the role of Adrian Maliqi. The file number is LTB-T-072041-23 and scheduled to be heard January 11, 2024.
4. I note, the issue to be determined in the A2 application is the issue to also be determined at this hearing with respect to jurisdiction as it relates to Adrian Maliqi's set aside motion. Having reviewed the Tenant's application, the fact story is the same in both matters before the Board. I find there is no prejudice to bring the A2 application forward for global resolution.
5. There is no dispute that the Tenant, entered into a lease agreement with the Landlord for this rental unit. The tenancy commenced September 1, 2022. The Tenant moved out around the end of April 2023. The Occupant moved into the rental unit early May 2023. The Occupant paid rent directly to the Tenant and had no direct relationship with the Landlord. The sublease ended August 31, 2023.
6. The disclosure packages included various documents and communications. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the relevant evidence and oral testimony when making my determinations.

Position of the Landlord and Tenant

7. The Landlord and the Tenant take the position that around end of July, early August 2023, the Occupant asked for the lease to transfer to himself. The Tenant communicated this request with the Landlord and the Landlord sent to the Tenant all required information for the Occupant to complete this process.
8. The Landlord said that the Occupant provided incomplete and insufficient documentation and the assignment could not be completed. After the Landlord communicated this with the Tenant, the Tenant relayed the deficiencies to the Occupant and advised the assignment could not be completed as it stands. The Tenant said the Occupant was made aware of the deficiencies and deadlines and did not comply.
9. The Landlord and the Tenant said that due to non-compliance from the Occupant, the Tenant revoked the assignment, advised the Occupant that he will need to find alternative accommodation as he is not a Tenant and no lease was put in place for his tenancy.

10. Then the Tenant signed an N9 notice to end her tenancy with a termination date of October 31, 2023. The Occupant did not vacate and following the *ex parte* order dated September 20, 2023, he filed a motion to set aside.
11. Although this tenancy ended, the Landlord has since entered into a new lease agreement with the Occupant, effective November 1, 2023. The Landlord's legal representative said that should the Board deny the motion and lift the stay, the order will not be enforced due to the new tenancy agreement.

Position of the Occupant

12. The Occupant claims that he complied with the requirements to complete the assignment but the Landlord refused so that they could commence a new tenancy at higher rent. Although the Occupant spoke to compliance, he did not lead sufficient evidence to support the proposition that he rectified the various deficiencies as identified by the Landlord.
13. Although the Occupant claims the Landlord is in breach of s.95 of the *Residential Tenancies Act, 2006* (the 'Act'), based on the evidence before the Board, I do not find this to be the case in this circumstance.
14. I note, during testimony, the Occupant stated that his partner was in hospital at the time of the assignment request and that he was busy and unable to provide the missing documents.

Legislation and Analysis

15. Subsection 202(1) is an instruction to the Board to look at the real substance of transactions between parties. It requires search for intent. Here, the evidence establishes, on a balance of probabilities, that the Occupant resided in the unit as an occupant but not as a tenant by way of assignment or subletting or by way of an implied agreement.
16. To be clear, there was no indication during the hearing from either party or in any of the Occupant's evidence that there was any subletting or assignment of the tenancy of the unit by the Tenant to the Occupant.
17. With regard to the Occupant's claim that there was an agreement, implied or otherwise, that the Occupant became a tenant under the tenancy, I am not persuaded that this is so.
18. Notwithstanding the fact that the Act is remedial legislation, there are legislative limits upon what facts can constitute a tenancy agreement.
19. I am not satisfied that there is any implied tenancy agreement between the Landlord and the Occupant.

File Number: LTB-L-072201-23-SA

File Number: LTB-T-072041-23

20. Based on the evidence before the Board and on a balance of probabilities, I find there was no assignment of the tenancy to Adrian Maliqi and as such he has no standing before the Board. As he lacks standing before the Board, he was not permitted to file a motion to set aside the *ex parte* order.

21. This order contains all of the reasons for the decision within it. No other reasons shall be provided.

It is ordered that:

1. The motion to set aside Order LTB-L-072201-23, issued on September 20, 2023, is denied.
2. The stay of Order LTB-L-072201-23 is lifted immediately.
3. This order resolved the file LTB-T-072041-23.

November 27, 2023

Date Issued

Dana Wren

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.