



**Order under Section 69  
Residential Tenancies Act, 2006**

**Citation:** Medallion Corporation v Shields, 2023 ONLTB 71150

**Date:** 2023-11-14

**File Number:** LTB-L-020334-23

**In the matter of:** 103, 1 DEAN PARK ROAD  
TORONTO ON M1B2W5

**Between:** Medallion Corporation Landlord

**And**

Jonathan Shields Tenants  
Kevin Gibson

Medallion Corporation (the 'Landlord') applied in this L2 application for an order to terminate the tenancy and evict Jonathan Shields ('Shields') and Kevin Gibson ('Gibson') (together the 'Tenants') because the Landlord claims the Tenants have been persistently late in paying their rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date on the N8 notice of termination.

This application was heard by videoconference on October 18, 2023.

The Landlord's Legal Representative, S. Korman, and the Tenants attended the hearing. Gibson was represented by L. Webley. Shields spoke to Duty Counsel before the hearing started.

**Preliminary Issues:**

Service of N8 was found to be made to both Tenants

1. Shields raised the issue that he did not receive an N8 notice and only received notice of this hearing approximately 7 days in advance of the hearing.
2. The Landlord submitted a Certificate of Service signed by Diana Mondroiu stating the N8 was given to both Tenants on February 15, 2023 by placing the notice in the mailbox. Diana Mondroiu, an employee of the landlord was not made available to testify at the hearing.
3. Gibson confirmed that he had received the N8 notice in February. He recalled two copies of the notice being received in the mail and retrieved by his girlfriend, who gave one copy

to him and the other to Shields. Gibson recalled the N8 notice having the Schedule A chart showing dates rent was due and paid attached. Gibson's girlfriend was not made available to testify at the hearing.

4. Gibson was consistent in his testimony when challenged under cross examination, even when it would have been to his benefit to impugn service of the N8 or the Schedule A.
5. The Landlord's Legal Representative submitted that there is no requirement to serve multiple copies of a notice to multiple tenants; there was no requirement to prove service on Shields as service on Gibson was confirmed by Gibson himself. We do not accept this submission. We find that principles of procedural fairness require all parties to be served to be able to participate in a hearing; for this reason, the Board serves a Notice of Hearing to each tenant. The Certificate of Service form itself implies this requirement by providing options for serving a single tenant or 'more than one tenant, who is a party to the same application, on the same date and in the same way.'
6. Section 191(1) of the *Residential Tenancies Act, 2006* ('the Act') provides that "A notice or document is sufficiently given to a person other than the Board" followed by a listing of allowable methods in sub sections (a) to (g). The Board has consistently interpreted this to mean that valid service is determined by the Landlord's compliance with the Act, whether or not the Tenant(s) actually became aware of the notice or document.
7. We find on a balance of probabilities that two copies of the N8 and Schedule A were served to the rental unit. This finding is based on the Certificate of Service and the testimony of Gibson.
8. Having found that the Landlord served two copies of the N8 notice and Schedule A to the rental unit, we find that the Landlord has complied with the service requirements of the Act. If, as Shields alleges, Gibson or his girlfriend interfered with the mail and withheld his copy of the notice, that is beyond the control of the Landlord and does not negate the Landlord's compliance with the Act regarding service of a notice of termination.

#### Service of Notice of Hearing Properly Given to all Parties

9. Shields stated that he only received the notice of hearing 7 days ago and needed more time to prepare.
10. The Board's records show that the Notice of Hearing package was mailed on August 8, 2023.

#### Reasons and Details on N8 Found to be Adequate

11. The N8 notice itself contains insufficient reasons and details for the notice, however the attached Schedule A provides sufficient reasons and details for the Tenants to know the case against them. Service of a collateral document contemporaneously with the notice which supplements the notice may give the tenant sufficient information to avoid any possible prejudice (*Bhagwandin v. Wright* 1988 28 O.A.C. 146 (C.A.)).

12. As discussed above we determined it was more likely than not that the Schedule A was served at the same time as the N8 notice. Accordingly, we find that the N8 combined with the Schedule A provide sufficient reasons and details under the Act.

#### Adjournment Request Denied

13. At the outset of the hearing Shields commented that he was hoping to retain a paralegal but needed time to set aside the necessary funds. An adjournment was not requested; however, the Landlord's Legal Representative raised the question of whether an adjournment was required. Although an adjournment had not been formally requested, we considered the implied request, and an adjournment was not required.
14. The Board's Guideline 1 provides parties with information about how adjournment requests will be handled. There is no absolute right to representation at the Board. Shields was able to speak with Duty Counsel prior to the hearing so was not proceeding entirely without legal advice. The issues in this application are narrow and straight forward and do not require complex legal arguments. Given the length of time since the application was filed in February (approximately 8 months) and the Board's duty to hear matters expeditiously an adjournment would not be appropriate.
15. When Shields formally requested an adjournment midway through the hearing, these reasons were repeated with the additional reason that adjournment requests should be made at the beginning of a hearing as per Rule 21.6 of the LTB's *Rules of Procedure*.

#### Incorrect Date of Birth on Lease Does not Invalidate the Contract

16. Shields noted the lease misstated his date of birth and submitted this mistake could invalidate the lease. The error in the date of birth was discovered at the hearing. There was no submission that Shields ever believed the Jonathan Shields listed in the lease to be anyone other than himself.
17. The Act applies to all residential tenancies, whether the tenancy is created by a formally drafted legal lease, an oral agreement, or an implied agreement. Section 202(1) of the Act requires the Board to "ascertain the real substance of all transactions and activities relating to a residential complex".
18. The incorrectly stated date of birth of a tenant in the lease document does not have any impact on this application.

#### Joint Tenancy Found, Resulting in Joint and Several Liability

19. Gibson submitted that he had, with a few exceptions at the start of the tenancy, paid his portion of the rent on time and the late payments were attributable to Shields.
20. Gibson attempted to refer to documents or receipts which he had uploaded to the Tribunals Ontario Portal to support his position that he had made rent payments on time. It was determined that the documents he was referring to were uploaded to the accompanying L1 application and had not been served to the other parties. After

consultation with his legal representative, the hearing proceeded with his oral testimony only.

21. Both Gibson and Shields agreed in their testimony that their arrangement to split the total rent for the unit was an agreement made between the two of them separate and apart from the Landlord; the Landlord had no knowledge of the details of the agreement.
22. The lease document included in Exhibit 1 lists both Gibson and Shields as tenants and lists one total rent with no reference to apportioning the total rent between the tenants.
23. Submissions by Gibson directly and through his legal representative did not support a finding that Gibson and Shields were tenants in common. Instead, submissions included that Gibson 'no longer wants to be in a joint tenancy' and that Gibson wants to sever the relationship with Shields.
24. Based on the lease agreement and the testimony of all parties, we find that this is a joint tenancy. The Board does not have jurisdiction to convert a joint tenancy to tenancies in common; the remedies ordered in this application must apply to all Tenants.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. There is an L1 application (L-050286-23) scheduled for a hearing on December 21, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On February 15, 2023, the Landlord gave the Tenants an N8 notice of termination and Schedule A. The notice of termination contains the following allegations: Between December 1, 2021 and December 31, 2022, rent was paid late every month.
4. The Tenants have persistently failed to pay the rent on the date it was due. The rent is due on the first day of each month. After the N8 was served, rent continued to be paid late every month until the hearing: a total of 23 months.
5. Based on the Monthly rent, the daily compensation is \$38.68. This amount is calculated as follows: \$1,176.60 x 12, divided by 365 days.
6. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$1,165.84 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$8.78 is owing to the Tenants for the period from July 1, 2023 to October 18, 2023.
8. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
9. Gibson expressed a desire to remain in the unit while Shields was removed from the joint tenancy. This is not a remedy within the jurisdiction of the Board to order. Gibson was clear in his testimony that he believed 'Shields would not change' and if the tenancy were

to continue the parties would be back before the Board again in the future for the same payment issues. This is the third time the parties have been before the Board. If the Board cannot remove Shields from the unit, Gibson expressed multiple times throughout the hearing that he does not wish to continue a tenancy with Shields. Shields stated he has been withholding rent, totalling approximately \$6,000 to the end of December 2023, because he believes Gibson and his family members staying in the unit agreed to pay this amount of the rent. There is no agreement between the Tenants about the exact division of rent between the Tenants. After considering these submissions it is not reasonable to believe that a remedial payment plan under section 78 would be effective.

10. The Landlord submitted that it was clear that no agreement was possible between the Tenants that could sustain the tenancy. He submitted that after a year of N4 notices and current arrears, termination of the tenancy is the only reasonable resolution. The Landlord is willing to delay termination until January 31, 2024.
11. Gibson requested 3-4 months to secure new accommodations if the tenancy is terminated. Shields similarly requested additional time if an eviction is ordered.
12. We 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 not be unfair to postpone the eviction until January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
13. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 31, 2024.
2. If the unit is not vacated on or before January 31, 2024, then starting February 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 1, 2024.
4. The Tenants shall also pay to the Landlord \$201.00 for the cost of filing the application.
5. The Landlord claimed and is entitled to daily compensation. Daily compensation shall start from May 1, 2023 (the day after the termination date in the N8) until the tenancy terminates on January 31, 2024, or an earlier date if the Tenants vacate the rental unit before January 31, 2024. The amount of daily compensation shall be reduced by any amounts paid as rent.
6. The Landlord owes \$1,174.62 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
7. However, if the Tenants overstay beyond the termination date, the Landlord is authorized to deduct from any amount owing to the Tenants \$38.68 per day for compensation for the

use of the unit starting February 1, 2024 to the date the Tenants actually move out of the unit or are evicted by the Sheriff.

8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

**November 14, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

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Dawn Carr and Michelle Tan  
Members, Landlord and Tenant Board

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 of the Tenants expires on August 1, 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.