



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

**Citation:** Pinedale Properties Ltd. v Dhakecha, 2023 ONLTB 72526

**Date:** 2023-11-09

**File Number:** LTB-L-068038-22

2023 ONLTB 72526 (CanLII)

**In the matter of:** 2719, 9 CRESCENT PLACE  
TORONTO ON M4C5L8

**Between:** Pinedale Properties Ltd. Landlord

**And**

Sandip Dhakecha Tenant

**And**

Mirza Bilal Unauthorized Occupants  
Ayesha Mirza

Pinedale Properties Ltd. (the 'Landlord') applied for an order to terminate the tenancy of Sandip Dhakecha (the 'Tenant') and evict Mirza Bilal and Ayesha Mirza (the 'Unauthorized Occupants') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupants without the Landlord's consent. The Landlord also applied for compensation by the Unauthorized Occupants for the use of the rental unit.

This application was heard by videoconference on July 27, 2023.

The Landlord's Agent, Mario Gambelic, the Landlord's Legal Representative, Kristin Ley, the Tenant, and the Unauthorized Occupants, attended the hearing.

**Determinations:**

1. This application is about whether the Tenant transferred the occupancy of the rental unit to the Unauthorized Occupants in a manner that was not authorized by the *Residential Tenancies Act, 2006* (the 'Act').
2. The Unauthorized Occupants were in possession of the rental unit on the date the application was filed.
3. The lawful monthly rent for the period of August 2019 to July 2020 is \$1,145.48.
4. The lawful monthly rent for the period of August 2020 to December 2021 is \$1,170.68.
5. The lawful monthly rent for the period of January 2022 to December 2022 is \$1,184.72.
6. The current lawful monthly rent is \$1,1214.33.

*Landlord's evidence*

7. The Landlord's Agent ('M.G.') has been employed as the property manager since February 2021. In his testimony, he stated he first learned that the Tenant was no longer residing in the rental unit after receiving an email (LL Exhibit 2) from the previous property manager in which the Tenant wrote on March 25, 2021:

I am no longer living in the said unit since January 2018. I trusted one of my friends who was in need to stay there and he promised that he will continue paying the rent, which he did until June 2020, but before a couple of weeks, I come to know that he is not paying anything. Anyways, whatever dues are there, it is my responsibility and I will settle it.

8. M.G. testified he responded to the Tenant's email (LL Exhibit 3) advising him that the Landlord did not find any records authorizing him to sublease/transfer the tenancy agreement to another individual. M.G. advised the Tenant the transfer was a direct contravention of the tenancy agreement and the Act. He requested information with respect to the Unauthorized Occupants and copies of any agreements the Tenant entered into with the Unauthorized Occupants. M.G. stated no such documents were provided to the Landlord nor did he receive any notice that anyone had been added to the lease as an occupant. He further testified the email concluded with the Landlord's agreement to terminate the tenancy.
9. The Landlord's Legal Representative submitted the tenancy agreement between the Landlord and Tenant as evidence (LL Exhibit 1). The tenancy agreement shows the tenancy commenced on August 1, 2016 for a period of one year. The occupants named on the tenancy agreement are Nisha Dhakecha and Krishn Dhakecha.

10. M.G. testified the Landlord received an email from the tenant on April 21, 2023 (LL Exhibit 4) which explained the circumstances between the Tenant and the Unauthorized Occupant and had attached a signed copy of the N11 Form (LL Exhibit 5) from the Tenant. M.G. further testified the Landlord accepted the termination date of March 31, 2023.
11. The Landlord's Legal Representative submitted a copy of the rent ledger (LL Exhibit 6) which shows the current rent arrears owing are \$44,630.72.

*Tenant's evidence*

12. In his testimony, the Tenant stated he moved into the rental unit in August 2016. In December 2017, he needed to return to India and upon the Unauthorized Occupants' learning he was vacating the unit, they asked him to transfer the lease to them. Despite having his reservations about transferring the lease to the Unauthorized Occupants, he was assured by them that the proper paperwork would be completed and provided to the Landlord. He stated it was not until he received a telephone call from the Landlord that he learned the rent had not been paid since June 2020.
13. The Tenant testified he trusted the Unauthorized Occupants and did not ensure the proper paperwork had been provided to the Landlord with respect to assigning the tenancy agreement nor did he contact the Landlord to confirm the tenancy agreement had been transferred. He confirmed he provided the Landlord with a signed N11 Form terminating the tenancy on March 31, 2021.

*Unauthorized Occupants' evidence*

14. In his testimony, M.L. stated that when he learned the Tenant would be vacating the rental unit he approached him to move into it knowing the monthly rent would remain the same. He stated he could not afford to pay a higher rent and therefore sought to have the tenancy agreement assigned to him. When he learned he did not qualify for the rental unit, he had the Tenant sign a form, provided by the Landlord, adding him as an occupant on the lease. He stated that because they received access from the Landlord to the building's gym, it was his belief the Landlord was aware they were living in the unit. He reiterated that he is an occupant and not a tenant of the rental unit.
15. M.L. stated since he moved into the rental unit in late December 2017, the monthly rent was paid however he fell on hard times and has been unable to pay the monthly rent and did not dispute that the rent has not been paid since June 2020.

**Analysis**

16. Subsection 100 of the Act says:

- (1) 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.
  - (2) An application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy.
  - (3) A landlord who makes an application under subsection (1) may also apply to the Board for an order for the payment of compensation by the unauthorized occupant for the use and occupation of the rental unit, if the unauthorized occupant is in possession of the rental unit at the time the application is made.
17. The Landlord sought to collect rent arrears from the Tenant and daily compensation from the Unauthorized Occupants.
18. Subsection 103(1) states:
- A landlord is entitled to compensation for the use and occupation of a rental unit by an unauthorized occupant of the unit. *[emphasis added]*
19. Based on the above provision of the Act, the Landlord may only seek daily compensation be paid by the Unauthorized Occupants. As a result, any monetary claim against the Tenant is denied.
20. Based on the evidence before me, and on a balance of probabilities, I find that the Tenant transferred the occupancy of the rental unit to Unauthorized Occupants in a manner that was not authorized by the Act. I say this because the Tenant was of the belief the tenancy agreement was being transferred to M.L. legally and with the consent of the Landlord. He was assured by M.L. the proper documents were provided to the Landlord and the rental unit was no longer his responsibility. I find that M.L.'s method of attaining the rental unit was made in bad faith and as such, I find they are Unauthorized Occupants.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

#### Daily Compensation

22. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupants.
23. The Landlord's claim in this application exceeds the Board's jurisdictional limit as set out in

s.207(1) the Act of \$35,000.00\*, that being the limit of the Small Claims Court. The Landlord must accede to the jurisdiction of the Board and waive any claim above this limitation.

24. The Unauthorized Occupants owe the Landlord \$35,000.00 in daily compensation for use and occupation of the rental unit for the period from May 1, 2021 to November 9, 2023.
25. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs. This cost shall be paid to the Landlord by the Unauthorized Occupants.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated.
2. The Unauthorized Occupants must move out of the rental unit on or before November 20, 2023.
3. If the unit is not vacated by November 20, 2023, then starting November 21, 2023, 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 November 21, 2023.
5. The Unauthorized Occupant shall pay to the Landlord \$35,000\* which represents daily compensation for the use of the rental unit from June 1, 2020 to the day they move out of the rental unit.
6. The Unauthorized Occupants shall also pay to the Landlord \$201.00 for the cost of filing the application.
7. The total amount the Unauthorized Occupants must pay to the Landlord is \$35,201.00.
8. The Unauthorized Occupants shall pay the Landlord the full amount owing by November 20, 2023.
9. If the Unauthorized Occupants do not pay the Landlord the full amount owing by November 20, 2023 they will owe interest. This will be simple interest calculated from November 21, 2023 at 7.00% on the outstanding balance.

**November 9, 2023**

**Date Issued**

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

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Susan Priest

Member, 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 expires on May 21, 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.