



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

Citation: Emerald City Developments V Inc. v Adigun, 2023 ONLTB 71331

Date: 2023-11-03

File Number: LTB-L-020909-23

In the matter of: 3306, 32 FOREST MANOR RD
NORTH YORK ON M2J0H2

Between: Emerald City Developments V Inc.

Landlord

And

Solomon Adigun

Tenant

Emerald City Developments V Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Solomon Adigun (the 'Tenant') because the tenancy was entered into as a result of an agreement to purchase the condominium unit and the agreement has been terminated.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 19, 2023.

Only the Landlord's Legal Representative David Strashin attended the hearing.

As of 9:30 AM, the Tenant 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 only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.

The N8 notice

3. On January 30, 2023, the Landlord sent the Tenant and the Tenant's Legal Representative an N8 notice of termination by e-mail. Based on the Landlord's uncontested evidence, the parties consented to service by e-mail. I find that the notice was validly served.
4. The residential complex is a condominium building that has not yet been registered. The notice of termination alleges that the Tenant failed to pay interim occupancy dues and

failed to close the sale as required under the Agreement of Purchase and Sale (the 'APS'), which resulted in a termination of the Agreement and the tenancy.

The legal test

5. The legal test for this application is outlined in section 58(1)(4) of the *Residential Tenancies Act* (2006) (the 'Act'):

58 (1) A landlord may give a tenant notice of termination of their tenancy on any of the following grounds:

4. The tenancy arose by virtue of or collateral to an agreement of purchase and sale of a proposed unit within the meaning of the *Condominium Act, 1998* in good faith and the agreement of purchase and sale has been terminated.

The tenancy arose out of an agreement of purchase and sale for a condominium

6. The rental unit is located in a condominium complex.
7. On February 14, 2021, the parties entered into an Agreement of Purchase and Sale, in which the Tenant agreed to purchase the rental unit from the Landlord.
8. The Landlord did not submit a copy of the APS as evidence. The following determinations were made on the Landlord's Representative's uncontested oral submissions at the hearing and the letters from the Landlord to the Tenant dated January 26, 2023, December 13, 2022, and November 17, 2022 which refer to specific terms in the APS.
9. The APS allows the Tenant to occupy the rental unit from the Occupancy Date to the Closing Date and requires the Tenant to pay monthly occupancy fees in the amount of \$2,304.08. I find that the monthly occupancy fees meet the definition of rent under the Act, and the Tenant's right to occupy the rental unit during this period makes this a tenancy. The tenancy is conditional on the completion of the APS.
10. The Tenant began occupying the rental unit pursuant to the occupancy agreement in the APS on or about May 1, 2022 and is currently in possession.

The APS terminated

11. The Tenant failed to pay any occupancy fees since the beginning of the tenancy. The Tenant also failed to provide the Landlord the required documents and funds to close the sale despite being given several extensions. The Landlord was, at all times, ready and willing to complete the transaction.
12. Due to the Tenant's actions, the Landlord terminated the APS on March 31, 2023.
13. I find that the Tenant breached the APS by failing to provide the Landlord the required documents and funds to close the sale, and by failing to pay the required occupancy fees pursuant to the APS.
14. The Tenant was required to pay the Landlord \$15,301.62 in daily compensation for use and occupation of the rental unit for the period from April 1, 2023 to October 19, 2023.

15. Based on the Monthly rent, the daily compensation is \$75.75. This amount is calculated as follows: \$2,304.08 x 12, divided by 365 days.
16. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Section 83

17. 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. The Tenant did not attend the hearing to give evidence of their circumstances, or to contest the Landlord's application to terminate the tenancy and evict the Tenant.
18. There is no last month's rent deposit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 14, 2023.
2. If the unit is not vacated on or before November 14, 2023, then starting November 15, 2023, 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 November 15, 2023.
4. The Tenant shall pay to the Landlord \$15,301.62, which represents compensation for the use of the unit from April 1, 2023 to October 19, 2023.
5. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$15,487.62.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 15, 2023 at 7.00% annually on the balance outstanding.

November 3, 2023
Date Issued

Kate Sinipostolova
Member, Landlord and Tenant Board

Harry Cho

Vice Chair, 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 of the Tenant expires on May 15, 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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