



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

**Citation:** ZAKALA v COLEMAN, 2023 ONLTB 70136

**Date:** 2023-10-30 **File Number:** LTB-T-022816-23  
and LTB-L-023312-23

**In the matter of:** Apt 2, 122 GEORGE ST  
ETOBICOKE ON M8V2S4

**Between:** BOHDAN ZAKALA Landlord

**And**

ELIZABETH COLEMAN Tenant

**And**

TARN COLEMAN Unauthorized Occupant

BOHDAN ZAKALA (the 'Landlord') applied for an order to terminate the tenancy of ELIZABETH COLEMAN (the 'Tenant') and evict TARN COLEMAN (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent (hereinafter "LTB-L-023312-23" or "A2 Application").

Tarn Coleman applied for an order determining Bohdan Zakala or the Landlord's superintendent/agent harassed, obstructed, coerced, threatened or interfered with them, altered the locking system on a door giving entry to the rental unit or residential complex without giving them replacement keys and substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household (hereinafter "LTB-T022816-23" or "T2 Application").

The Landlord, the Landlord's representative M. Yarmus, the Tenant/Occupant and the Tenant/Occupant's representative T. Sandukhchyan attended the hearing on June 5, 2023.

The Landlord, the Landlord's representative M. Yarmus, the Tenant/Occupant and the Tenant/Occupant's representative M. Rosolak, the Tenant/Occupant's witnesses Jason Tucker, Jennifer Carr attended the hearing on September 14, 2023.

**Determinations:**

A2 Application

1. The Landlord brings this A2 application pursuant to [subsection 100\(1\)](#) of the [Residential Tenancies Act, 2006](#) (the 'Act') which states as follows:

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. By way of background, in 2006 Tarn Coleman ("TC" or "Unauthorized Occupant") and the Landlord signed a lease for Unit #2 (hereinafter, the "Rental Unit" or "Unit #2"). The Lease was signed by the Landlord and TC, as tenant.
3. In 2009, TC's mother, Elizabeth Coleman ("EC" or "Tenant") moved into the Rental Unit, joining TC. In November 2012, a new lease for the Rental Unit was signed between the Landlord and EC (the "2012 Lease"). The Landlord produced a copy of the Lease agreement showing EC as the sole Tenant in the rental unit.
4. In or around the same time that EC signed the 2012 Lease, TC leased and took possession of another unit in the same residential complex (hereinafter "Unit #1"). Although the Landlord produced an unsigned draft lease for Unit #1 dated November 15, 2012, a written lease for Unit #1 was not executed by the Landlord and TC until June 2016. The Landlord testified there was tension between the TC and EC and thus, TC reached out to him in 2012 to rent Unit #1 because she had recently secured new employment. Similarly, TC testified that EC had a substance use disorder which kept her up at night, and consequently, she sought to rent out Unit #1 in or around 2012.
5. The Landlord submits TC completely moved out of the Rental Unit at the time of leasing Unit #1 and that TC never lived at the Rental Unit thereafter. TC, on the other hand, submits she maintained a tenancy at both units. When the Landlord subsequently became aware of EC's passing, the Landlord sought to regain possession of the Rental Unit and the locks to the rental unit were changed sometime thereafter in late February/early March. In response,

TC filed a T2 Application on March 16, 2023 seeking, among other relief, an order allowing her to move back into the Rental Unit.

6. The first issue to be determined is whether TC is a “tenant” at the Rental Unit, or an “occupant”. For the reasons outlined below, I find on a balance of probabilities that TC is an occupant, only.
7. The Act defines a “tenant” as a “*person who pays rent in return for the right to occupy a rental unit...*” The Act also provides that a tenancy agreement may be “*written, oral or implied*”. While TC’s decision to enter into a new (oral) lease for Unit #1 in 2012 does not necessarily result in a termination of TC’s 2006 (written) lease at the Rental Unit, I find that TC ended her tenancy at the Rental Unit at that time, as TC failed to maintain or establish a new landlord and tenancy relationship at the Rental Unit thereafter.
8. As noted, the Landlord signed a new lease with EC for the Rental Unit in November 2012. While the 2012 Lease included the handwritten notation “Renew”, this notation appears to have been informally inserted as a result of EC already residing in the rental unit, and not included to signify a “renewal” of the 2006 lease, in which TC was a Tenant. Rent receipts were thereafter rendered solely to EC as rent was paid by EC to the Landlord by means of cheque. Although TC claimed she gave her mother cash for the rent, TC did not produce any bank statements evidencing such payments. Even if such cash payments were made to EC, the evidence did not establish that the Landlord was aware of such payments or that such purported contributions established a tenancy. The Act specifically defines “rent” as constituting “*any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord...*” [emphasis added] and section 103(2) of the Act provides that “*A landlord does not create a tenancy with an unauthorized occupant of a rental unit by accepting compensation for the use and occupation of the rental unit, unless the landlord and unauthorized occupant agree otherwise*” [emphasis added].
9. The documentation produced suggests the Landlord was under the impression that EC was the sole tenant – and that TC was aware of the Landlord’s belief. The Landlord provided rent receipts for income tax purposes solely to EC and produced copies of such receipts from 2015, 2017 and 2019. TC also noted she claimed rent for Unit #1 on her taxes and EC claimed rent for the Rental Unit on her taxes. Moreover, the Landlord produced a Form N1 (Notices of Rent Increase) for 2017 and 2020, naming EC as the sole Tenant.
10. When TC was asked on cross-examination why she did not object to her name not being listed on the notices of rent increase, TC responded simply “*because I was already a tenant as far as I was concerned...why would I object to my mother having independence*”. The Landlord also produced a letter dated August 20, 2020 written to the Landlord by EC, alone,

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addressing maintenance concerns in the Rental Unit. Once again, when TC was asked on cross-examination why her name was not listed on this maintenance request, TC indicated she “was involved” but did not sign the letter because of the Landlord’s purported dislike for her. Moreover, while TC claims she pays cable and internet at the Rental Unit, her recent communication with the Landlord at least subtly suggests she also recognized EC as the sole tenant at the rental unit, TC texted the Landlord on December 31, 2022 with an update on her mother’s ability to pay the rent given her condition:

*“My mom has no more checks left for her rent I’m at the palliative care facility with her she’s recovering from a stroke so I have left cash with Jason for her rent”*  
[emphasis added]

11. Although TC testified she had an acrimonious relationship with her mother and stated her mother treated her poorly, I did not find her evidence believable that she “*did all her living*” in the Rental Unit. More likely, I find that TC predominantly resided at Unit #1 and periodically visited her mother at Unit #2. In this regard, I note that TC testified she watched tv and predominantly slept in Unit #1. Jason Tucker (JT), a tenant at the building, testified TC would frequent back and forth and had access to both units at all times. Similarly, Jennifer Carr (JC), a roommate and caregiver of TC since 2019, testified TC slept and paid rent at Unit #1 and visited the Rental Unit during the day.
12. Based upon the evidence submitted, including but not limited to the fact that TC had signed a lease for a different unit in 2012 and failed to maintain or create an implied or express a landlord and tenancy relationship at the Rental Unit thereafter, I find that TC is not a “Tenant” as defined under the Act. Given this finding, the Board must next consider whether there was a transfer of occupancy entitling the Landlord evict the person to whom occupancy of the rental unit was transferred. The legal test on this type of an application is as follows:
  - a) Firstly, whether the Tenant transferred occupancy of the rental unit to another person without the Landlord’s consent as contemplated in subsection 100(1) of the [Act](#)?; and,
  - b) Secondly, whether the Landlord filed this application within sixty days of discovering the unauthorized occupancy as required by [subsection 100\(2\)](#) of the Act?
  - c) Thirdly, whether the Tenant should be granted relief from eviction under s.83 of the Act?
13. I find the Landlord has satisfied parts a) and b) of the test. The Landlord’s A2 application was filed on March 9, 2023. While TC testified her mother passed away on December 10,

2022, the Landlord's A2 Application stipulates the Landlord discovered her passing on February 2, 2023. At the hearing, the Landlord testified he learned about EC's passing from neighbours "in the middle" of January 2023.

14. While the onus to prove this application rests with the Landlord, the "mid-January" discovery date of EC's passing was not challenged by the Tenant, nor was any evidence presented that the Landlord became aware of EC passing more than 60 days prior to the March 9, 2023 filing date. In fact, as late as December 31, 2022, the correspondence suggests TC was actively trying to conceal the news of her mother's passing from the Landlord. In a text communication between TC and the Landlord's agent on December 31, 2022, TC advised the Landlord's agent that EC was "*recovering from a stroke*" and was currently at a "*palliative care facility*", when in fact, EC had passed away on December 10, 2022. At the hearing, TC stated she did not want to disclose her mother's passing to the Landlord because "*it was none of their business*" and added "*I knew they were gonna do this to me*".
15. Given the Tenant's text message from December 31, 2022 concealing the news of EC's passing, coupled with the Landlord's testimony he only found out from neighbours in mid-January 2023, I find on a balance of probabilities the Landlord filed the application with sixty days of discovering the unauthorized occupancy.

### *Section 83 Considerations*

16. The next and final issue that must be decided is whether TC should be granted relief from eviction pursuant to [section 83](#) of the [Act](#).
17. The personal circumstances of both the Tenant/Unauthorized Occupant and the Landlord must be considered as part of this analysis. TC has been residing at the residential complex since 2006 and is in receipt of social assistance. TC testified she has serious and unfortunate health issues as well as limited mobility, requiring caregiving services. Moreover, the tenancy at Unit #1 between the Landlord and TC was recently terminated on May 31, 2023, as a result of the Landlord's L2/N12 application and the resulting LTB Order # LTB-L-022855-22.
18. TC is not currently in possession of the rental unit, albeit TC indicated that some of her personal possessions remain at the Rental Unit. By Interim Order issued on June 7, 2023, the parties were ordered to arrange for a mutually agreeable time for the Tenant to retrieve/pick-up any personal belongings in the Landlord's possession. At the conclusion of the September 14, 2023 hearing, the Landlord indicated the Tenant had not contacted the Landlord to retrieve any personal possessions. While the Tenant's representative indicated at the September 14, 2023 hearing that she would be in contact with the Landlord's

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 representative to arrange for a mutually agreeable pick-up time, in the event such arrangements have not yet been made, based upon the assurances made, I trust the Landlord will continue to facilitate such arrangements.

19. In cases such as the current one, the Board must balance the interests of landlords and tenants. While I am certainly sympathetic to TC's situation, denying the Landlord's application would be unduly prejudicial, as it would effectively create a tenancy agreement between the Landlord and an Unauthorized Occupant, despite the Landlord's legitimate refusal to do so. Accordingly, upon consideration of all of the disclosed circumstances in accordance with [subsection 83\(2\)](#) of the Act, I find that it would be unfair to deny eviction.

#### T2 Application

20. Given my finding that TC is not a Tenant, the Board does not have jurisdiction to consider the Tenant's T2 Application and thus, this application is dismissed.

#### **It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated.
2. The Tenant/Unauthorized occupant's T2 Application is dismissed.

**October 30, 2023**

**Date Issued**

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 Peter Nicholson

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.