



**Order under Section 94
Residential Tenancies Act, 2006**

Citation: Amiraco Property Inc. v Lepine, 2023 ONLTB 67899

Date: 2023-10-18

File Number: LTB-L-049966-22

In the matter of: 38, 54 GENEVIVE CRES
LONDON ON N5Y4A8

Between: Amiraco Property Inc. Landlord

And

Kara Lepine Tenant

Amiraco Property Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kara Lepine (the 'Tenant') of a superintendent's premises, because the Tenant's employment as superintendent has ended. 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 September 6, 2023. The Landlord's agent Corrie Sanford attended the hearing. As of 11:11 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. The Tenant was an Assistant Resident Manger at the residential complex and their employment ended on August 22, 2022. The Tenant did not vacate the rental unit specifically used for superintendants until April 2, 2023.
2. The Tenant was in possession of the superintendent's unit when the application was filed.
3. The Landlord is seeking daily compensation for each day the overholding Tenant remained in the unit for the period of August 30, 2022 to April 2, 2023.
4. The Landlord stated the Tenant paid \$230.16 since the application was filed.
5. The Landlord also stated at the hearing that the Landlord is seeking \$468.26 for unpaid hydro utility costs for the period of August 2022 – April 2023.
6. Section 93 and the related section 94 of the *Residential Tenancies Act, 2006* (the 'Act') stipulates the following:

93(1) If a landlord has entered into a tenancy agreement with respect to a superintendence premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated.

93(2) A tenant shall vacate a superintendent's premises within one week after his or her own tenancy is terminated.

93(3) A landlord shall not charge a tenant rent or compensation or receive rent or compensation from a tenant with respect to the one week mentioned in subsection (2).

94 The landlord may apply to the board for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

7. The Landlord produced a copy of the termination letter dated August 22, 2022 which advised the Tenant that their employment was terminated and that the Tenant must vacate the superintendent's premises they were occupying by August 29, 2023. I accept the Landlord's uncontested testimony that the Tenant did not vacate the superintendent's premises until April 2, 2023 and more than one week had passed since the termination of their employment.
8. Section 86 of the Act states that a landlord is entitled to compensation for the use and occupation of a rental unit by a tenant who does not vacate the unit after his or her tenancy is terminated by order, notice or agreement.
9. Section 87(3) of the Act states,

A landlord may apply to the board for an order requiring a tenant or former tenant to pay compensation for the use and occupation of the rental unit after a notice of termination or an agreement to terminate the tenancy has taken effect if,

(a) the tenant or former tenant is or was in possession of the rental unit after the termination of the tenancy...

10. The Landlord presented evidence that the amount for the monthly rent was \$1,032.65 and the Landlord is not holding a last month's rent deposit.
11. Based on the uncontested testimony and evidence of the Landlord, I find that the Tenant owes the Landlord daily compensation for the use of the unit from August 30, 2022 to April 2, 2023 based on the daily compensation rate of \$33.95 which totals \$7,333.23, less the amount of \$230.16 paid by the Tenant. This amount totals \$7,103.07.
12. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Reimbursement for utility costs

13. The Landlord is not entitled to the hydro utility costs claimed at the hearing in the amount of \$468.26. This is because this amount has not been claimed within the application filed by the Landlord. On page 7 of the application, it notes that the amount owing for utility costs is \$0. The Board's records confirm that the Landlord did not file an amended application to claim utility costs. Further, the Landlord produced a copy of the employment

contract and there is nothing noted within the agreement as it relates to the payment of utilities.

14. Section 88.2 of the Act stipulates the following:

88.2 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the tenant or former tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement;

(4) The costs referred to in subsection (1) are reasonable out-of-pocket expenses that the landlord has incurred or will incur as a result of a tenant's or former tenant's failure to pay utility costs that they were required to pay under the terms of the tenancy agreement.

15. The Landlord testified at the hearing that during the period of the Tenant's employment, the utility costs were paid by the Landlord but once their employment was terminated, the Tenant was then responsible for paying for the hydro utility costs. The Landlord testified that the Tenant never paid any amounts towards the hydro utility costs.
16. There was no evidence before me that a new tenancy was created following the termination of the Tenant's employment. The employment contract produced by the Landlord does not note anything regarding any terms for the payment of the utilities. Therefore, there is also nothing to support that the parties agreed to any terms that would make the Tenant responsible for the hydro utility costs. The Landlord's request for \$468.26 towards hydro utility costs is therefore denied.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 2, 2023.
2. The Tenant shall pay to the Landlord \$7,103.07, which represents compensation for the use of the unit from August 29, 2022 to April 2, 2023.
3. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
4. The total amount the Tenant owes the Landlord is \$7,304.07.
5. If the Tenant does not pay the Landlord the full amount owing on or before October 29, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 30, 2023 at 7.00% annually on the balance outstanding.

October 18, 2023
Date Issued

Kimberly Parish
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.