



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

Citation: Meszen v Kwak, 2023 ONLTB 65427

Date: 2023-10-06

File Number: LTB-L-068431-22

In the matter of: 1, 270 Seaton Street
Toronto Ontario M5A2T4

Between: Isaac Meszen and Perla Meszen Landlord

And

Edward Kwak Tenant

Isaac Meszen and Perla Meszen (the 'Landlord') applied for an order to terminate the tenancy and evict Edward Kwak (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on July 13, 2023.

The Landlord's Representative, Mihai Paunescu, the Landlords, the Tenant's Representative, Mohsen Azimi, and the Tenant attended the hearing.

Determinations:

Background and Context

1. The Tenant stopped occupying the rental unit December 25, 2022, due to a fire that occurred in a neighbouring complex, that spread over to this rental complex. The rental complex, as of the date of the hearing, had not been repaired because of delays being experienced from the owners of the adjacent properties. Whether or not this caused the tenancy to lawfully terminate is a separate determination which I will not be making on this order, as this issue is not before me on this application.
2. The lease was signed by two tenants, one of which is the named Tenant on this application. The notice and the application only name the Tenant on this application and does not state the name of the former tenant who is also a signatory on the lease.

Preliminary Issue: Joint Tenancy vs Tenancy in Common

3. At the beginning of the hearing, the Tenant brought forward to have the application dismissed because the Landlords are alleging that the Tenant is responsible for the whole of the rent stated on the lease agreement, however, the Tenant believes that the tenancy is not a joint tenancy, but a tenancy in common.

4. The Landlords asserted that according to the lease agreement that the tenancy was a joint tenancy between the Landlords and the Tenant and former tenant.
5. The Landlords, the Tenant and the former tenant entered into a lease agreement for the rental unit on December 29, 2020. The rent to be charged was \$1,850.00.
6. The rental unit had two bedrooms, but one was significantly larger than the other. Both parties do not contest that the Landlords recommended that the one tenant pay \$875.00/month and the other pay the Landlord \$975.00/month. Thus, the Tenant had the smaller bedroom and would then pay the Landlords \$875.00/month and the former tenant would pay the remaining \$975.00/month.
7. In the spring of 2021, the relationship between the Tenant and the former tenant began to deteriorate to the point that the former tenant wanted to vacate the rental unit.
8. The Landlords offered the former tenant another rental unit located in the same neighbourhood as this rental unit. The Tenant did not want the former tenant to be released from their responsibility to the lease until the Tenant was able to find another roommate.
9. The Tenant referred at least one potential candidate to assume the lease from the former tenant, however the Landlords refused to accept this candidate.
10. In May 2021, the Landlords allowed the former tenant to move into an alternate rental unit before the Tenant could find someone to rent the other bedroom. This was done without the consent or knowledge of the Tenant.
11. After the former tenant moved out, the Tenant continued only to pay his portion of the rent of \$875.00/month, plus an additional \$25/month towards storage located in the rental complex.
12. The Landlord served an N4- Notice to Terminate the Tenancy for Non-Payment of Rent to the Tenant on October 3, 2021. The monthly rent due, according to the N4, is \$1,850.00/month.
13. An L1 application, based on the rent being \$1,850.00/month, was filed with the Board on October 29, 2021.

Preliminary Issue- Analysis

14. LTB Interpretation Guideline 21 defines the two types of tenancies governed by the *Residential Tenancies Act, 2006* (the 'Act').

In a joint tenancy, there is a single tenancy agreement, and the tenants are jointly and severally (individually) liable for the payment of the entire rent for the rental unit.

In the case of a tenancy in common, while all the tenants are occupying the same premises, each tenant in common has a separate tenancy agreement with the landlord even if all the tenants have

signed one tenancy agreement. Each tenant in common is individually responsible for the payment of their share of the rent for the rental unit.

15. A joint tenancy means that all the tenants have equal right to occupy any part of the rental unit, however, a tenancy in common means that there are areas that one tenant may have rights to, but the other tenant does not have a right to occupy. Such would be the case where the lease agreement would acknowledge that tenant "A" would occupy one bedroom and tenant "B" would occupy another bedroom.
16. The Landlord's Representative made mention of the "four unities" in his closing. The "four unities" that are required to create a joint tenancy are unity of title, time, interest, and possession.
17. On the surface, it appears there is a joint tenancy agreement. Two tenants signed a lease with a landlord at the same time, provides for a single monthly rent for the entire rental unit (\$1,850.00/month) and does not provide either Tenant with the exclusive possession of any portion of the rental unit. The Tenant and the former tenant would, and did, take possession of the unit at the same time.
18. However, I cannot only consider the terms of the written lease when making my determination. Pursuant to section 202 of the Act, the Board must assess the real substance of all transactions and activities relating to a rental unit, and, if necessary, disregard the outward form of a transaction.
19. The evidence before me suggests that, despite the terms of the lease, there was no unity of possession. For there to truly be a unity of possession, both the Tenant and the former tenant would have had equal access to all parts of the rental unit, including both bedrooms. However, as admitted by both the Landlords and the Tenant, the Landlords brokered a deal between the parties that the Tenant would inhabit the smaller bedroom for \$875/month while the former tenant would occupy the larger bedroom for \$975/month.
20. Had this been an agreement just between the two tenants to divide the rental unit in such a way, then I would accept that the Landlords could still consider this a joint tenancy. However, the Landlords' involvement in brokering such a plan shows that the Landlords were complicit in the deal that one tenant would not be entitled to enter the other tenant's room.
21. Furthermore, even if there was initially a joint tenancy, I find that when the Landlords, allowed the former tenant to vacate the rental unit without the Tenant's consent, this became a tenancy in common, rather than a joint tenancy.
22. In this case, the lease signed by the parties was for that of a joint tenancy, however, based on the actions of all of the parties involved, I find that the tenancy was a tenancy in common because it lacks the element of joint "possession".
23. Based on the evidence before me, I find that the application is fundamentally flawed because it fails name both joint Tenants and the second joint tenant does not have notice of this proceeding. Therefore, amending it to include the second joint tenant would not be procedurally fair. Therefore, the Landlord's application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

October 6, 2023

Date Issued

Toronto ON M7A 2G6

Robert Brown

Member,

Landlord and Tenant Board

15 Grosvenor St, Ground Floor

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