



Order under Section 69 Residential Tenancies Act, 2006

Citation: OLD OAK PROPERTIES INC. v Kavanagh, 2023 ONLTB 64944

Date: 2023-10-04

File Number: LTB-L-035146-23

In the matter of: 105, 605 PROUDFOOT LANE
LONDON ON N6H4S2

Between: OLD OAK PROPERTIES INC.

Landlord

And

Paul Kavanagh

Tenant

OLD OAK PROPERTIES INC. (the 'Landlord') applied for an order to terminate the tenancy and evict Paul Kavanagh (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on September 12, 2023.

The Landlord's Agent, Renabelle King, and the Tenant, Paul Kavanagh ("PK"), attended the hearing.

Determinations:

1. Based on the evidence presented at the hearing, I find that I cannot grant the relief the Landlord is seeking and the application is, therefore, dismissed.
2. PK testified that he moved into the rental unit as a resulting of being hired as a building manager in September 2021. He was promised a two-bedroom unit but was given a one-bedroom unit for him and his two sons. The employment was terminated on October 25, 2021.
3. PK testified that no lease was signed after the termination of his employment and that he should not be responsible for the arrears due to the misconduct of the Landlord.
4. The Landlord submitted a copy of the Offer of Employment which states: "Included as a part of your compensation package is a one-bedroom apartment at 105-605 Proudfoot Lane, which bears a monthly market rent of \$1,369.00 inclusive of heat, hydro, and water. As this is the only unit available now, as soon as a two or three-bedroom becomes available we can move you into this unit should you wish".
5. The Landlord also submitted a copy of the Termination of Employment letter which states: "As part of this restructuring, the unit in which you reside will no longer be rent free (if applicable) and you will be required to make rent payments".

6. The Landlord submitted a copy of a lease commencing September 2, 2021 and ending on October 31, 2021. The lease was electronically signed by the Landlord with a box checked and dated September 2, 2021. The box next to PK's name was checked with no date.
7. PK denied signing any lease and testified that he did not know the monthly rent amount or arrears accumulated.
8. The Landlord submitted that numerous letters were sent to PK and he was aware of his obligations to pay rent if he opted to stay in the unit and the amount of arrears claimed by the Landlord.
9. The Landlord filed an L1 application with the Board, claiming unpaid rent since December 1, 2021 and termination of the tenancy. At the hearing, the Landlord testified that the Landlord was seeking termination of the tenancy because the PK was terminated as a building manager and has not pay rent.
10. Upon considering this application further, I find that I cannot grant the relief the Landlord is seeking because the *Residential Tenancies Act, 2006* (the "Act") deals with the termination of a tenancy in respect of a superintendent's premises in a very specific way, which is not by way of an L1 Application.
11. The rental unit at issue here is a "superintendent's premises" as defined by section 2(1) of the Act. It was where PK lived while he employed as a building manager and the unit is located in the complex with respect to which PK was so employed.
12. Section 93(1) of the Act states that:

If a landlord has entered into a tenancy agreement with respect to a superintendent's premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated."

[emphasis added]

13. As PK's employment was terminated on October 25, 2021, his tenancy was also terminated on that date.
14. I also find that once PK's employment was terminated, the parties did not agree to the terms of a new tenancy. PK denied signing the lease and there was no evidence to demonstrating that the lease was electronically signed by PK himself. I also question the cogency of the lease submitted as the fixed term was from September 2, 2021 to October 31, 2021. Based on the documents submitted by the Landlord, PK would not have been responsible for rent for this period as his rent obligation began in December 2021.
15. I find that there was no meeting of the minds with respect to the amount of rent PK would be charged for continuing to reside in the rental unit after their employment was terminated. Without an agreement about this fundamental element of a lease, I cannot find that there exists a tenancy agreement between the parties. Therefore, I find that this application must be dismissed as there is no relief available under the current L1 Application before me.

16. However, it is important for both parties to understand that a landlord can file an L2 application seeking an order evicting a tenant from a superintendent's unit if the superintendent fails to vacate within seven days of their employment being terminated. In that application that a landlord can also seeking an order requiring the tenant to pay compensation for their occupation of the rental unit. It is also important for the parties to understand that whether or not a termination of a superintendent's employment was fair or reasonable is not a matter that falls within the Board's jurisdiction.

It is ordered that:

1. The application is dismissed.

October 4, 2023
Date Issued

Vicky Liu
Member, Landlord and Tenant Board

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