



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

Citation: Yeole v Sem, 2023 ONLTB 62353

Date: 2023-09-11

File Number: LTB-L-041272-22

In the matter of: 170 KAYLA CRES
MAPLE ON L6A3P4

Between: Delineate Technologies Inc. Landlord

And

Sophan Sem Tenant
Sokhoeun Huong
Yeang Chum

Delineate Technologies Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Sophan Sem, Sokhoeun Huong and Yeang Chum (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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 March 2, 2023.

The Landlord's agent, Swarnamala Yeole, and the Tenant attended the hearing. The Landlord was represented by Lisa Thompson. The Tenant was represented by Saveria Romano.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession as of the hearing date.
3. By way of background, this is a month-to-month tenancy in which rent is due on the twelfth of the month in the amount of \$2,325.00. This tenancy began in June 2015.

4. I note on August 8, 2023, the Landlord's representative submitted an Advance Resolution Request to the Board requesting to withdraw their application.
5. As the hearing had already taken place and the request was not on consent of the parties, the request could not be granted.

PRELIMINARY ISSUE: LANDLORD IS A CORPORATION

6. At the hearing, the Tenant raised a preliminary issue with respect to the N12 notice of termination; specifically, that it misidentified the Landlord as an individual, when the Landlord on the lease agreement and title search was a corporation. A copy of the occupancy agreement and parcel register shows the Landlord and owner as Delineate Technologies Inc.
7. The Tenant further submits that throughout the tenancy, the Landlord has been identified as the corporation whether it is correspondence from the Landlord via email or letter, or a notice of rent increase.
8. The Tenant submits the corporate Landlord was not entitled to use the N12 form pursuant to subsection 48(5) and therefore the Landlord's application must be dismissed.

Landlord's Response

9. SY testified that while the rental unit was owned by the corporation, she was the individual acting as the Landlord by taking care of the expenses and dealing with the Tenant. She testified that the insurance is in her name, she collects the rent and that in essence, she and the corporation are one.
10. The Landlord relies on case law *Abrams v. Slapsys c/o 1406393 Ontario Inc.* where the Court makes it clear that under certain circumstances a corporate entity could give notice for landlord's own use. In that case, the corporation's only shareholder was the landlord who had permitted the occupancy of the rental unit. The Court was of the view that there had been sufficient evidence before the Board that Mr. Slapsy, the sole shareholder of the corporation, was the "landlord".
11. The Landlord puts forth a similar argument and also relies on TSL-85025-17 which is not binding on me but which was an order issued after the Act changed with respect to notices under section 48(5) of the Act. In this case, the Board was satisfied that the individual owner, CB was the directing mind of the corporation and met the definition of a "landlord" under the Act.

ANALYSIS

12. The problem with the case law relied upon by the Landlord is that it is no longer valid since the Act was amended in 2017 to change the law in this regard with the addition of subsection 48(5) which states:

48(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit **unless**,

- (a) the rental unit is owned in whole or in part by an individual; **and**
- (b) the landlord is an individual.

[Emphasis added.]

- 13. Based on the evidence before the Board, I am not satisfied on a balance of probabilities that the rental unit is owned in whole or in part by an individual as required by subsection 48(5) of the Act. I say this based on the parcel register, lease agreement and admission of the Landlord that the unit is owned by the corporation.
- 14. As the Landlord has failed to meet the first part of the test under subsection 48(5) of the Act, the Landlord's application must be dismissed.

REQUEST FOR COSTS AND RETURN OF COMPENSATION

- 15. The Landlord sought costs in the amount of \$600.00 against the Tenant as the Tenant did not leave by the termination date, wasted the Board's time by raising a preliminary issue and has caused the Landlord a significant amount of stress under the circumstances.
- 16. The Landlord also seeks the return of the one-month compensation paid to the Tenant on February 16, 2023 should the Landlord's application fail.
- 17. The Tenant opposes the Landlord's request for costs as there was no improper conduct exhibited by the Tenant. The Tenant was not required to move out and was entitled to raise a valid preliminary issue. Thus, the Landlord's request should be dismissed.
- 18. With respect to the compensation, the Tenant submits that while the Landlord e-transferred the money, the Tenant did not accept the e-transfer so the funds were not debited from the Landlord's account. As such, the Tenant does not owe any monies to the Landlord.

ANALYSIS

- 19. The Board's Interpretation Guideline 3 on Costs states that a member has discretion to require a party's legal representative to pay the other party's preparation and representation expenses where their conduct was unreasonable. The Interpretation Guideline cites examples of unreasonable conduct, including failing to take necessary steps, such as those required by the RTA or Rules, any misconduct at the hearing or in the proceeding, and ... showing a lack of respect for the process or the Board, among others.
- 20. With respect to the request for costs, I do not find there to be sufficient grounds to support this. The evidence and submissions by the Landlord are insufficient to establish the Tenant's conduct was inappropriate or unreasonable and warranted costs to be ordered.

21. With respect to the return of the compensation pursuant to section 48.1 of the Act, the evidence before the Board was that the Landlord sent an e-transfer to the Tenant. There was no evidence before me that the funds were successfully deposited into the Tenant's account or that the Tenant accepted the e-transfer. Further, the Tenant's own evidence supports the fact that they did not deposit the funds.
22. Absent anything more, I find the Landlord's request to be moot and must be dismissed.

It is ordered that:

1. The application is amended to reflect the correct name of the corporate Landlord.
2. The Landlord's application is dismissed.

September 11, 2023
Date Issued

Sonia Anwar-Ali
SMember, 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.