



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

Citation: Del Pozo v Del Pozo, 2023 ONLTB 59376

Date: 2023-08-31

File Number: LTB-L-036382-23

In the matter of: 9, 20 BUDGELL TERR
TORONTO ON M6S1B4

Between: Luis Del Pozo Applicant

And

Rolando Del Pozo Respondent

Luis Del Pozo (the 'Landlord') applied for an order to terminate the tenancy and evict Rolando Del Pozo (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on August 16, 2023.

The Applicant and the Respondent attended the hearing. The Respondent was represented by Adeela Alvez.

Determinations:

1. For the reasons that follow, I find that the application must be dismissed because the parties do not have a landlord-tenant relationship governed by the *Residential Tenancies Act, 2006* ("Act"). The parties below will be referred to as the 'applicant' and 'respondent'
2. This application is based on an N4 notice of termination served for non-payment of rent. Both the N4 notice and L1 application filed by the applicant assert that the monthly rent is \$3,500.00 per month and that the Respondent has paid no rent since June 1, 2015. The application claims \$366,000.00 in arrears of rent.
3. The parties are biological brothers and dispute who is the lawful owner of the rental unit.
4. The parties agree that the rental unit is in a condominium town house complex, which was formerly owned by the mother of the parties.
5. Both brothers grew up and resided in the rental unit together for most of their life and agree that their mother, Teresa Del Pozo passed away on or about June 2015. After Ms. Del Pozo passed, both brothers resided in the rental unit together for a short period.
6. Luis Del Pozo (the applicant) testified that shortly after his mother passed, he moved out of the rental unit because he and his brother could not get along. Rolando Del Pozo (the respondent) currently resides in the rental unit and has done so his entire life.
7. The parties agree that no written tenancy agreement was signed between the parties, nor was there any oral agreement reached between the parties to lease the rental unit. Mr.

Luis Del Pozo testified that he demanded that his brother pay rent in 2015, to which Rolando Del Pozo refused. When I asked Mr. Luis Del Pozo why he believes the rent is \$3,500.00 per month despite no agreement being reached, he stated that he came up with this amount because that is what a neighbouring home was being rented for in 2023.

Analysis:

8. In order for the Act to apply, and for the Board to have jurisdiction to hear this matter, the applicant and respondent must have entered into a tenancy agreement. Section 2(1) of the Act defines a tenancy agreement as follows:

“tenancy agreement” means a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit;

9. Based on the evidence before me, I find that there was no tenancy agreement entered into by the parties and therefore is no landlord and tenant relationship . As such, this Act does not apply, and the application must be dismissed.
10. The evidence is clear that this is a case of two siblings who are fighting over their parents’ estate and not a landlord and tenant relationship. The parties confirmed at the hearing that they were both residing in the rental unit prior to their mother passing away and that no written tenancy agreement was entered into on or after June 2015 when their mother passed. Further, the parties agree that Mr. Rolando Del Pozo has resided in the rental unit his whole life and never paid rent to either his mother or to Mr. Luis Del Pozo. There was also no oral or implied agreement entered into after Ms. Del Pozo passed away which stipulated that Mr. Rolando Del Pozo was to pay a specific amount for the right to continue to occupy the rental unit. The applicant simply unilaterally decided after 8 years that his brother should pay \$3,500.00 per month in rent based on the rents at a neighbouring rental unit and decided this should charge should be retroactive to the date his mother passed away. The applicant acknowledges that there was no agreement to pay this amount for any period.
11. The ownership of the rental unit is in dispute and I am not making any determination as to who the rightful owner is. However, even if I was to find that the applicant was the sole lawful owner, I would still find that there is no landlord and tenant relationship give the absence of a tenancy agreement
12. The Board has the exclusive jurisdiction to determine all applications under this Act and with respect to all matters in which jurisdiction is conferred on it by this Act. While the parties clearly have a dispute respecting their mother’s estate, the Board does not have jurisdiction with respect Estate matters or disputes over the ownership of properties. The parties may wish to raise their concerns before a Court of competent jurisdiction.

Costs against the applicant:

13. After I gave my oral ruling at the hearing, the respondent's representative requested that the Board order costs against the applicant. The respondent argues that the applicant knowingly initiated a frivolous and vexatious application.
14. Section 204 of the Act permits the Board to order a party to pay the costs of another party. Guideline 3 of the Board's Interpretation Guidelines requires that, in considering a request for costs awarded against a party, the Board consider whether the party's actions were unreasonable. A party's actions will be considered unreasonable if they cause undue expense or delay. An example given in Guideline 3 is bringing a frivolous application.
15. I agree that the applicant's application was frivolous and as such, find that costs should be awarded. The applicant in this case knew there was no tenancy agreement between the parties and that he and his brother were disputing who owns his mother's estate. Rather than addressing this matter before the Superior Court, the applicant decided to file an application with the Board which retroactively charged the responding party 8 years' worth of arrears based on the current market rent in an attempt to have his brother removed from a home passed down from his mother's estate.
16. The applicant's actions in this case are a waste of Board and responding party's time. The application was clearly initiated in bad faith and as an attempt to avoid proceedings before the Superior Court.
17. In accordance with Rule 23.2 of the Board's Rules of Procedure, which states that costs should be awarded in the amount of \$100.00 per hour for attendance and preparation time, I find that the respondent (tenant) is entitled to costs in the amount of \$200.00. This amount includes \$100.00 for the time of hearing and \$100.00 for preparation for the matter.
18. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The application is dismissed.
2. The applicant (landlord) shall pay to the respondent (tenant) \$200.00 in costs.
3. If the applicant (landlord) does not pay the respondent (tenant) the full amount owing by September 15, 2023, the applicant will owe interest. This will be simple interest calculated from September 16, 2023 at 6.00% annually on the balance outstanding.

August 31, 2023
Date Issued

Fabio Quattrociochi
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.