



## **Order under Section 77, 100 and 101 Residential Tenancies Act, 2006**

**Citation:** Galliera v Weir, 2023 ONLTB 57679

**Date:** 2023-08-25 **File**

**Number:** LTB-L-049320-23

**In the matter of:** 116 Queen Street South  
Thorold Ontario L2V3N9

**Between:** Mona Galliera Landlord

**And**

Elva Weir Tenant

**And**

Ibada Abidrahan Occupants  
Trevor Benz  
Ed Stapleton  
Joseph Green.

Mona Galliera (the 'Landlord') applied for an order to terminate the tenancy and evict Elva Weir (the 'Tenant') ('L3 application')

The Landlord also applied for an order to terminate the tenancy and evict Ibada Abidrahan, Trevor Benz, Ed Stapleton, Joseph Green ('the 'Occupants') for transferring the occupancy to a person other than by an assignment or sublet in accordance with the Residential Tenancies Act, 2006 (the 'Act') and for compensation for the use of the rental unit. (A2 Application)

A hearing was held to consider this application.

This application was heard by videoconference on August 14, 2023. The Landlord attended the hearing. The Occupants, Ibada Abidrahan, Trevor Benz, attended the hearing.

**Determinations:**

*L3 Application*

1. The Landlord and Tenant signed an Agreement to End the Tenancy ('N11') on April 4, 2023. The Tenancy was to terminate June 5, 2023.
2. The Tenant vacated the rental on June 5, 2023; therefore, the Landlord's application is moot.

*A2 Application*

3. On June 7, 2023, the Landlord attempted to regain possession of the rental unit and discovered the four occupants remain in the unit. The Landlord seeks to evict the unauthorized occupants.
4. Trevor Bentz testified at the hearing for the occupants. He told the Board that the occupants were living in the rental unit for over two years. He testified that he was solely responsible for the rent, and he paid the utilities.
5. The Landlord testified that was never informed or consented to the Tenant subletting the rental unit. She did not receive rent or utilities from any of the occupants.

*Analysis*

6. While the Landlords knew that the Occupants were living in the rental unit, this did not confer on the Occupant the status of a tenant, nor in and of itself some sort of automatic transfer of rights due the tenancy terminating pursuant to the N11.
7. The Act does not define the term "occupant" however, Guideline 21, of the LTB Interpretation Guidelines defines an occupant as a person who lives in the rental unit at the invitation and at the indulgence of the tenant and under the terms of the tenancy. An occupant has no contractual relationship with the Landlord and any default of rent is the responsibility of the tenant.
8. In the context of this case, the Occupants' occupancy is predicated on the Tenant living in the rental unit. The Occupants may have participated in paying partial rent to the Tenant while she lived in the rental unit, but that is not determinative that the Landlord consented to the Tenant subletting the rental unit.
9. It is well established that the Act does not allow the Landlord to control who enters the rental unit, or for how long. A tenant has a positive obligation to request a landlord's consent if it wishes to sublet or assign the rental unit. That was not done in this case. Therefore, I find the Tenant transferred the rental unit to the Occupants, without the Landlord's consent, when she vacated the rental unit pursuant to the N11.

10. It follows the Occupants are unauthorized to be in the rental unit beyond June 5, 2023, the date the tenancy terminated.
11. At the hearing the Occupants requested additional time to move. Unfortunately for the Occupants, none of that is relevant to the issues before me. In most eviction applications, this kind of evidence or circumstances would be relevant to relief from eviction under section 83 of the Act. But that provision only applies when there is an application before the Board to evict a tenant. It does not apply when the application involves the eviction of an unauthorized occupant. The Occupants shall move out of the rental unit on or before February 17, 2024.
12. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupants. The Occupants shall pay the Landlord \$2,570.96 for use of the rental unit between June 7, 2023, and August 14, 2023. Further the Occupants shall pay the Landlord \$37.81 per day for use of the rental unit beginning August 15, 2023.
13. The Occupants are responsible for paying the Landlord \$201.00 for the application filing fee incurred.

**It is ordered that:**

1. The tenancy between the Landlord and Tenant is terminated. **The Occupants must move out of the rental unit on or before February 17, 2024.**
2. If the unit is not vacated on or before February 17, 2024, then starting September 18, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after February 18, 2024.
4. The Occupants shall pay to the Landlord \$2,570.96 for use of the rental unit between June 7, 2023, and August 14, 2023.
5. The Occupants also pay to the Landlord \$201.00, for the cost of filing the application.
6. The Total the Occupants owe the Landlord is \$2,771.96.
7. The Occupants shall also pay the Landlord \$37.81 per day for use of the rental unit beginning August 15, 2023.
8. If the Occupants do not pay the Landlord the full amount owing on or before February 17, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 18, 2024, at 7.00% annually on the balance outstanding.

**February 6, 2024**

**Date Issued**

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**Bryan Delorenzi**

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor  
Toronto ON M7A 2G6

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-3323234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on September 17, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.