



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

Citation: Malleum Real Estate Management v Gallant, 2023 ONLTB 51848

Date: 2023-07-24

File Number: LTB-L-059542-22
and LTB-L-002151-21-RV

In the matter of: 1B, 624 MAIN STREET EAST
HAMILTON ONTARIO L8M1J7

Between: Malleum Real Estate Management Corp Applicant

And

Tyler Gallant Respondent

Between: Malleum Real Estate Management Corp Landlord

And

Ron Gallant Tenant

Malleum Real Estate Management Corp (the 'Landlord') applied for an order to evict Tyler Gallant ('TG') because he was an unauthorized occupant—LTB-L-059542-22. The Landlord also applied for an order to terminate the tenancy and evict Ronald Gallant ('RG')—LTB-L-002151-21.

LTB-L-002151-21 was resolved by an order issued on September 12, 2022 (the 'Hearing Order'). On October 4, 2022, TG asked that the LTB review the Hearing Order based on the assertion that he is a party and was not reasonably able to participate in the hearing that resulted in the Hearing Order. On October 6, 2022, the LTB issued an interim order (the 'Interim Order') directing TG's request to a hearing and staying the Hearing Order.

LTB-L-059542-22 and TG's request to have the Hearing Order reviewed were heard by me by videoconference on November 7, 2022 and July 10, 2023. The Applicant and TG attended the hearings. I heard evidence from TG and the Landlord's representative, Robert Donmoyer.

Determinations:

Background

1. TG is the grandson of RG. TG passed away sometime in April or May of 2002. I was not provided with the specific date that RG passed away, but the particular date is not particularly relevant for resolving these applications.
2. On December 10, 2021, the Landlord served an N8 notice with a February 28, 2022 termination date. LTB-L-002151-21 was filed by the Landlord on December 21, 2021—before RG died—and scheduled for a hearing on June 15, 2022—after RG had died.
3. Only the Landlord attended before the LTB on June 15, 2022 and an order—the Hearing Order—was issued on September 12, 2022 terminating the tenancy and evicting RG, who had been dead for about four months by this time.
4. On June 15, 2022, the Landlord knew that RG had passed away and someone else was occupying the rental unit.
5. TG received notice of the hearing on June 15, 2022, but ignored it because it was addressed only to RG, and RG had passed away.
6. On July 8, 2022, the Landlord filed the A2 application to evict TG.
7. I was initially scheduled to hear the Landlord's A2 application and TG's request to review the Hearing Order on November 7, 2022. At that attendance, I determined that I would hear the A2 application first. I did this because of my view that the A2 application, if granted, would effectively resolve the issue on TG's request to review the Hearing Order—if TG was not a 'tenant' then he had no standing to have the Hearing Order reviewed

A2 Application

8. On the A2 application, the Landlord asserts that RG transferred the tenancy to a person—TG—without its consent.
9. The relevant sections of the *Residential Tenancies Act, 2006* (the 'RTA') say:

91 (1) *If a tenant of a rental unit dies and there are no other tenants of the rental unit, the tenancy shall be deemed to be terminated 30 days after the tenant's death.*

...

100 (1) *If a tenant transfers the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a subletting authorized under section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.*

(2) *An application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy.*

(3) *A landlord who makes an application under subsection (1) may also apply to the Board for an order for the payment of compensation by the unauthorized occupant for the use and occupation of the rental unit, if the unauthorized occupant is in possession of the rental unit at the time the application is made.*

10. Neither the Landlord nor TG filed documentary evidence in connection with the A2 application. The only evidence provided to me was in the form of verbal testimony from Mr. Donmoyer and TG.
11. Mr. Donmoyer testified that: (a) the Landlord purchased the residential complex in December of 2020; (b) after the acquisition, he attended at the rental unit to obtain a 'tenant acknowledgment' from RG; (c) RG would not complete a 'tenant acknowledgement', but advised Mr. Donmoyer that he was the only resident of the unit; (d) in April of 2022, the Landlord became suspicious that RG had passed away and this was confirmed on May 9, 2022; (e) on May 9, 2022, the Landlord also determined that a relative of RG—not TG--was living in the unit; and (f) on July 8, 2022—the same day the A2 application was filed—the Landlord became aware TG was living in the rental unit.
12. TG did not cross-examine Mr. Donmoyer.
13. TG testified that: (a) he is the grandson of RG; (b) he lived in the rental unit 'on-and-off' from the age of 13; (c) he recalled signing what he believed was a tenancy agreement in 2015, but did not have a copy of that agreement; and (c) the Landlord refused to acknowledge TG as a tenant and accept rent from him.
14. Mr. Donmeyer did not cross-examine TG.
15. I also had evidence that TG had changed the locks to the rental unit. I surmise from this that at some point RG provided TG with keys to the unit.
16. The evidence before me could have been better insofar as I was not provided with the specific date on which RG died. However, I find that: (a) at the time RG died there were no other tenants of the rental unit—I find that TG was an occasional guest of his grandfather;

(b) RG did not legally assign or sublet the unit to TG¹; and (c) the Landlord became aware TG was occupying the rental unit on July 8, 2022.

17. I appreciate that there was evidence that the Landlord discovered on May 9, 2022 that someone other than RG was occupying the rental unit. However, assuming that TG was also living in the unit on May 9, 2022 and the Landlord should have been aware TG was also occupying the unit on that date, the Landlord filed the A2 within 60 days of May 9, 2022.
18. I appreciate that ‘tenant’ is defined by the RTA to include the tenant’s heirs, assigns and personal representatives [RTA, s. 2(1)], but I do not think this results in an heir—and there was no evidence that TG was an heir of RG and TG did not argue that he was an heir of RG—automatically becoming a ‘tenant’ on the tenant’s passing. [See *TNL-06682-18 (Re), 2018 CanLII 113848 (ON LTB)*] Moreover, even if that was the case, section 91 of the RTA is triggered unless there is another tenant immediately prior to the tenant passing.
19. Based on my findings, the Landlord is entitled to an order evicting TG. [See *Homestead Land Holdings Limited v Brown, 2021 CanLII 89622 (ON LTB)*]
20. There is no need to terminate the tenancy of RG because it has been terminated by operation of section 91. While it is not necessary to clarify this point, my direction that TG pay occupation rent to the Landlord as a condition of these applications being adjourned on November 7, 2022 did not result in a (new) tenancy.

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21. TG requested until August 31, 2023 to vacate the rental unit. The Landlord agreed to give TG until August 31, 2023, provided TG permitted the Landlord t access to the rental unit to conduct a fire inspection by July 14, 2023. TG agreed to this condition.
 22. The Landlord sent a note to the LTB at 16:30 on July 14, 2023 indicating that it had attempted to access the rental unit at 14:00 on July 14, 2023, but no one answered the door. This note does not appear to have been sent a copy of this TG and there is no evidence that Landlord arranged with TG to have access to the unit at 14:00 on July 14, 2023.
 23. Notwithstanding the Landlord’s note, I am going to order TG to vacate the unit by August 31, 2023. My direction on July 10, 2023 **was not** that the Landlord simply show up at the unit and attempt to gain access, but that it **coordinate with TG** when access would be provided. The Landlord should follow my direction and coordinate with TG a time and date at which TG will, as agreed, provide access to the rental unit. I am not, however, prepared to delay the issuance of this order to determine if the Landlord complies with this direction.

¹ I do not believe it is necessary for there to have been an active step taken by RG to transfer the unit to TG. It is sufficient for the purpose of section 100 that RG provided TG with access to the unit: see *Homestead Land Holdings Limited v Brown, 2021 CanLII 89622 (ON LTB)*, referring to *Jemiola v. Firchuk, [2005] O.J. No. 6 (Div Ct)*.

24. The Landlord agreed that TG had paid the occupation rent for which he was responsible up to July 31, 2023. TG must, however, pay occupation rent for August of 2023.

Review of the Hearing Order

25. There was no serious dispute that the review would be refused if I granted the A2 application. Rule 26 of the LTB’s Rules Procedure provides that any **party** may request a review of an order that finally determines that party’s rights. **[LTB Rules of Practice, Rule 26.1]** TG was not a party to the L2 application—he was not a tenant—and, as a result, has no standing to request a review of the Hearing Order².

26. The review is also of no practical import because the Hearing Order is moot as a result of the passing of RG—the L2 application was probably moot when it was heard on June 15, 2022.

It is ordered that:

1. Tyler Gallant shall vacate the rental unit by August 31, 2023.
2. Tyler Gallant shall pay occupation rent for the month of August of 2023.
3. If the unit is not vacated on or before August 31, 2022, then starting September 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 September 1, 2023.
5. The request to review the Hearing Order is dismissed. The Interim Order is cancelled.

July 24, 2023

Date Issued

E. Patrick Shea

Vice Chair, Landlord and Tenant Board

15 Grosvenor St, Ground Floor Toronto
ON M7A 2G6

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

² I also note that the Hearing Order makes no determination(s) concerning TG’s rights.

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In accordance with section 81 of the RTA, the part of this order relating to the eviction expires in six months 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.

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