



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

**Citation:** IMH Pool XX v Scully, 2023 ONLTB 35920

**Date:** 2023-06-07

**File Number:** LTB-L-039996-22

**In the matter of:** 2108, 55 TRILLER AVE TORONTO  
ON M6R2H6

**Between:** IMH Pool XX Landlord

**And**

Victoria Scully Tenant

IMH Pool XX (the 'Landlord') applied for an order to terminate the tenancy and evict Victoria Scully (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

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

The Landlord's representative M Forrester attended the hearing. Anthony Manis, occupant of the unit attended the hearing.

**Determinations:**

*Who is the Tenant*

1. Anthony Manis, the current occupant of the unit attended the hearing. He testified that the Tenant named on the application, V Scully was at work and unable to attend the hearing. He said that sometime in 2019, the V Scully assigned the lease to Carrie Spadie who moved out in October 2021, and that he moved in at that time. He has resided in the unit since October 2021 and personally handed the building manager 12 cheques for payment of rent on the unit. He described these cheques as personal cheques with his name on them. He has not paid rent since October 2022. He claimed that since October 2022 he has attempted to make rent payments, but the Landlord has refused to accept his payments. He also said he would like the lease assigned to him, but it has been very difficult to do so. He said that the Landlord has refused to change the lease and that the named Tenant V Scully must assign the lease.
2. The Landlord's representative submitted that the Tenant V Scully is not residing in the unit and is working in another city, but is allowing friends to live in the unit. The Landlord will not accept payment of rent from non-leaseholders. Since the Landlord's position is that

Anthony Manis is an occupant of the unit and is not on the lease, the Landlord has refused to accept rent payments from his since October 2022. The Landlord's representative observed that the monthly rent for this unit is lower than current market value. The Landlord would like the lease updated to add the occupant to the lease, however the Landlord will not update the lease until all arrears are paid in full.

3. It was undisputed that the Landlord had accepted 12 rent payments from Anthony Manis from October 2021 to September 2022, and subsequently refused to accept further payments in October 2022.

Analysis

4. Section 100 of the *Residential Tenancies Act, 2006* ( the 'Act') states:

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

5. Subsection 104(4) of the Act states:

A person's occupation of a rental unit shall be deemed to be an assignment of the rental unit with the consent of the landlord as of the date the unauthorized occupancy began if,

- (a) a tenancy agreement is not entered into under subsection (1) or (2) within the period set out in subsection (3);
- (b) the landlord does not apply to the Board under section 100 for an order evicting the person within 60 days of the landlord discovering the unauthorized occupancy; and
- (c) neither the landlord nor the tenant applies to the Board under section 101 within 60 days after the end of the sub tenancy for an order evicting the subtenant.

6. Based on the submissions of the Landlord's representative, I find that the Landlord was aware that the former Tenant V Scully had moved out of the unit and was employed in a different city. I also find that the Landlord's actions on October 1, 2022, suggest that the Landlord knew that the Tenant V Scully had transferred occupancy of the unit to A Manis in an unauthorized way.
7. The Landlord did not apply to the Board for an order evicting Anthony Manis within the 60 day period referenced in subsections 100(2) or 104(4) (b) of the Act.

8. Therefore, I find that there has been a deemed assignment of the tenancy to Anthony Manis because the Landlord did not make an application within 60 days of October 1, 2022 and I find that Anthony Manis became a Tenant of the unit as of October 1, 2022.

The Rent Arrears

9. Section 95(8) of the Act states, in part: **Consequences of assignment**

(8) If a tenant has assigned a rental unit to another person, the tenancy agreement continues to apply on the same terms and conditions and

(b) the former tenant is liable to the landlord for any breach of the tenant's obligations and may enforce against the landlord any of the landlord's obligations under the tenancy agreement or this Act, if the breach or obligation relates to the period before the assignment

10. This provision means that the former Tenant V Scully is responsible for the rental arrears up to September 30, 2022, as the tenancy was assigned to A Manis as of October 1, 2022.
11. The lawful rent is \$1,526.67. It is due on the 1st day of each month.
12. The Landlord's application was filed on July 18, 2022. The arrears to July 31, 2022 were \$2,504.19. The rent that accrued for the months of August and September total \$3,053.34.
13. There was \$3,202.20 paid to the Landlord since the application was filed, in two payments:
1. \$1,601.10 on July 27, 2022
  2. \$1,601.10 on September 1, 2022
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. Consequently, the total amount of arrears and costs owed to September 30, 2023 are \$2,541.33.
16. The Landlord must start a new claim against current Tenant A Manis for any rent arrears owing from October 1, 2022 onwards.

**It is ordered that:**

1. Victoria Scully shall pay to the Landlord \$2,541.33 for arrears of rent to September 30, 2023 and costs.
2. If Victoria Scully does not pay the Landlord the full amount owing on or before June 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 19, 2023 at 6.00% annually on the balance outstanding.

**June 7, 2023**

**Date Issued**

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Heather Kenny

Member, Landlord and Tenant Board

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