



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** Palace Property Group v Barr, 2023 ONLTB 26195

**Date:** 2023-06-07 **File Number:**  
LTB-L-053505-22-RV

**In the matter of:** 4, 8 PHILIP ST  
SMITHS FALLS ON K7A3L6

<b>Between:</b>	Palace Property Group	Landlord
	<b>and</b>	
	Amanda Barr	Former Tenant
		<b>and</b>
	Natasha Lyonnais	Tenant

### Review Order

Palace Property Group (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Barr ('AB') because she, identified as the tenant, entered into an agreement to terminate the tenancy.

This application was resolved by order LTB-L-053505-22 issued on November 10, 2022.

On December 15, 2022, Natasha Lyonnais ('NL'), requested a review of the order and that the order be stayed until the request to review was resolved.

On December 15, 2022, the interim order LTB-L-053505-22-RV-IN was issued staying the order issued on November 10, 2022.

This application was heard by videoconference on January 9 and 20, 2023.

The Landlord's Legal Representative, Grace George, AB, NL's Legal Representative, Linda Tranter, and NL, attended the hearing. AB was present as the Landlord's witness; however, given

her status was also that of a named party she was permitted to remain throughout the proceeding. AB declined the opportunity to speak with Duty Counsel prior to the start of the proceeding.

Lisa Lewicki attended on behalf of the Landlord's Property Manager and provided evidence on behalf of the Landlord (the 'Landlord's Agent').

### Preliminary Issues

1. NL was not a party to the application that resulted in order LTB-L-053505-22 issued on November 10, 2022, and which order terminated the tenancy and provided the rental unit was to be vacant on or before November 21, 2022 (the "Eviction Order").
2. NL applied for a review of the Eviction Order as a person directly affected by the application in accordance with s. 187 of the *Residential Tenancies Act, 2006*, (the 'Act'). NL was identified as a potential party in order LTB-L-053502-22-RV-IN dated December 15, 2022. For the reasons set out below, this order determines NL is the Tenant.
3. At the outset of the hearing, NL requested an adjournment submitting she required additional time to obtain police records so she could respond to the claim in AB's affidavit alleging NL assaulted AB in May 2022.
4. The Landlord's Representative submitted the alleged assault was not relevant to the matter at issue which was whether NL is the tenant. I agreed with the Landlord's Representative.
5. NL's Representative admitted the request for the police reports related to credibility but also submitted the reports would show AB had permanently vacated the rental unit in May 2022. However, NL was aware of the events in May 2022 significantly in advance of the hearing and chose not to request such reports until the receipt of the AB's affidavit.
6. As a result, I found an adjournment was not necessary for an adequate hearing and NL's request for an adjournment was denied.
7. Additionally, at the outset of her evidence, NL's Representative advised of NL's specific accommodation needs and requested only one person speak at a time, advised NL may need questions repeated, and asked that NL be able to take brief breaks if and as necessary. I granted these requests and am satisfied measures were taken so that NL could properly understand the hearing.

### Determinations:

*Overview*

8. NL submits the Landlord engaged in an abuse of process when they filed an L3 Application based on an N11 Agreement to terminate the tenancy entered into with AB on September 14, 2022, with a termination date of September 30, 2022.
9. NL alleges when the N11 Agreement was entered into AB had already permanently vacated the unit and NL was by then the deemed tenant. Therefore, NL submits the N11 Agreement was not a valid agreement to terminate as AB's tenancy had already terminated, and any agreement to terminate had to be with her – the actual tenant.
10. By contrast, the Landlord submits AB was in possession of the rental unit when they entered into the N11 Agreement to terminate the tenancy with her and that NL is a squatter or trespasser.
11. For the reasons set out below, I find AB permanently vacated and transferred occupancy of the rental unit to NL in May 2022, and that the Landlord was aware of this unauthorized occupancy as of May 27, 2022, and did not bring an application for termination and eviction within 60 days.
12. Since I have found NL is the Tenant and she was not a party to the N11 Agreement, I find a serious error occurred in the proceeding when the Eviction Order issued based on an agreement to terminate that was not signed by her. Had the Eviction Order been enforced by the Sheriff NL would have been erroneously required to vacate the rental unit based on an agreement to which she – the Tenant at the point the N11 Agreement was signed - did not agree.
13. For the reasons that follow, NL's request to review is granted and the Landlord's application is dismissed.

*The Statutory Framework*

14. Section 100 sets out what application a landlord can bring when they find out someone has taken over a lease without their consent. Section 100 of the Act provides:

**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.

(4) Subsection 87 (5) applies, with necessary modifications, to an application under subsection (3).

15. In the absence of a landlord entering into a new tenancy agreement with an unauthorized occupant, if a landlord does not apply to the Board under s. 100 within 60 days of the landlord finding out about the unauthorized transfer, then the unauthorized occupant is deemed to be the tenant under subsection 104(4) of the Act.

16. Subsection 104(4) provides:

**104** (4) 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 subtenancy for an order evicting the subtenant.

17. In this case, the Landlord did not bring an application for termination and eviction due to unauthorized occupancy.

### *Discussion of Evidence*

18. There was extensive evidence presented by the parties. While I have considered all the evidence and submissions received, these reasons focus on the evidence most relevant to the matters in issue.

19. It was not disputed NL currently resides in the rental unit, a 2-bedroom apartment, with her 2 minor sons – aged 12 and 14. AB has not lived there since May 2022.

20. NL testified she moved into the rental unit on April 1, 2022, while AB was living in the rental unit. NL testified she paid AB \$500.00 in advance of moving in and then paid her \$600.00 every 2 weeks to cover rent, hydro, and internet.

AB moves to New Brunswick

21. NL testified AB told her she was going to move to New Brunswick and NL could live in the rental unit.
22. The Landlord's Agent testified AB emailed her in April saying she had a friend living with her. She testified she understood NL was living at the rental unit while AB was vacationing out east.
23. However, AB admitted that as of the first week of May 2022 she was living in New Brunswick. AB testified she moved to New Brunswick for a change of life and because her health care team is located there. AB testified she stayed with her boyfriend in New Brunswick in May 2022 and started renting an apartment from him on June 1, 2022.

Initial intention for NL to be assigned the lease

24. The Landlord's Agent testified an N4 Notice to End your Tenancy Early for Non-Payment of Rent was issued on May 20, 2022. She testified after this N4 Notice she received communication from AB about NL being assigned the lease.
25. NL testified she understood she would be taking over the lease and AB would be moving out.
26. AB admitted NL was to take over her lease with the Landlord. It was not submitted by any party that AB's request to be removed from the lease was accepted by the Landlord or that this request amounted to AB giving notice to terminate the lease in May 2022.
27. The Landlord's Agent testified they were open to the assignment but needed to obtain information and have the Landlord agree. By email dated May 25, 2022, the Landlord's Agent advised NL:

*Hello Natasha*

*Can you please confirm you have received this email and that the rental payment is being sent. Also if you wish to be added to the lease as Amanda has stated she wishes to be removed.*

*Much appreciated*

28. NL responded within half an hour:

*Yes, I confirm.*

29. After this exchange between the Landlord's Agent and NL regarding NL's intention to pay rent and reside in the rental unit, the Landlord's Agent testified AB sent an email on or

about May 27, 2022, saying she did not wish to move forward with the assignment to NL and would be attending with the police at the rental unit. As a result, no assignment was approved or entered into by the Landlord.

AB's change of mind and events of May 26, 2022

30. AB testified she changed her mind about assigning the lease to NL because NL could not afford the rent and it was taking too long for NL to get her affairs in order. AB appears to have mistakenly believed she would necessarily continue to be responsible for paying rent relating to the rental unit that is the subject of this application.
31. AB also testified she wished to keep the rental unit because her adult son could live there, she was back in Ontario regularly, and it made more sense to keep the place as she could maintain a residence that would permit contact with her other 2 minor children who resided with their father.
32. The parties agree that on or about May 26, 2022, AB was back in Ontario for a family funeral and there was a dispute between her and NL about money and possession of the rental unit where police were involved.
33. In emails between AB and NL dated May 26 and 27, 2022, AB said she had paid rent for NL to reside in the rental unit for the last month and seemed to indicate rent should now be paid by NL. AB testified she contacted the Landlord and Police and advised she wanted her home back. At no time did the Police indicate they could remove nor did they remove NL from the rental unit.
34. The parties agreed that at the direction of the Police, NL arranged to stay elsewhere over the weekend of May 27 to 29, 2022, so AB had access to the rental unit to remove some of her belongings. NL returned to the rental unit on May 30, 2022. AB returned to New Brunswick and, as set out above, began renting an apartment there.
35. After May 2022, the Landlord's Agent testified she understood AB was trying to regain access to the rental unit and she inferred AB was not living there.
36. There was no evidence AB ever asked the Landlord to bring an application for termination and eviction as NL was an unauthorized occupant.
37. The Landlord's Agent admitted no such application was ever brought.
38. From the month of June 2022 onward, neither AB nor NL paid rent while NL was living in the rental unit and AB was living in New Brunswick.

Actions of AB after May 30, 2022

39. I found AB's evidence regarding her understanding of the tenancy during the months after May 2022 contradictory and confusing and she herself admitted her understanding of events was not clear.

40. AB testified she gave NL notice many times she was going to evict her and tried to evict her to no avail as she said was not willing to take matters into her own hands. That said, AB also testified she was under the impression the rental unit was still hers and had given a friend keys to look in on the place. However, she further testified she was surprised to learn NL had not transferred items into her own name when she returned to Ontario for a month – a month she identified both as July and September.
41. NL testified AB left her messages many times in June and July saying she was going to come and change the locks in the night. NL also testified she was in contact with an adult son of AB's over the summer to arrange for AB's belongings to be picked up.
42. In August, AB retrieved some additional belongings from outside the rental unit.

Landlord and AB's agreement to sign an N11 Agreement

43. In September, in response to requests from NL as to where to send rent, the Landlord's Agent incorrectly advised NL she was not a tenant, and that AB would need to confirm she was willing to be removed from the lease and the Landlord would need to approve her tenancy.
44. AB testified she was contacted on behalf of the Landlord in September about an issue with NL. AB testified she wished to enter into an agreement with the Landlord to terminate the tenancy as she did not wish to be "on the hook" for the money.
45. On September 14, 2022, AB and the Landlord agreed her last month's rent deposit would be applied to June 2022, rental arrears to the end of September would be waived, the tenancy would terminate September 30, 2022, and the N11 Agreement was signed.
46. NL was subsequently advised there was no agreement to assign the lease, but she could apply to become a tenant.
47. The Landlord's L3 application was filed on September 15, 2022, the Eviction Order issued November 10, 2022, and NL's request to review was filed on December 15, 2022.

*Conclusion*

48. I find AB permanently vacated the rental unit and transferred occupancy to NL in May 2022. In the circumstances set out above, I do not find this changed when AB changed her mind about who she wished to be in the rental unit while she was not living there.
49. NL is the individual who lives at the rental unit and AB rents an apartment in New Brunswick.
50. AB left NL as the occupant of the rental unit twice: First, when she moved to New Brunswick near the beginning of May 2022 for a change of life, understanding NL would

take over the lease, and then again on May 30, 2022, after the interaction involving police when she returned to New Brunswick and began renting an apartment there.

51. I do not find the fact that there were disagreements between NL and AB, or that AB retained a set of keys or had belongings in the rental unit or that AB returned to Ontario to visit, sufficient to displace the facts that AB knowingly left NL with day-to-day occupancy of the rental unit while she resided in New Brunswick.
52. The Landlord's Agent admitted that as of May 27, 2022, she was aware that NL was living at the rental unit, that AB was not living at the rental unit, and that there was no authorized assignment. She also admitted she was aware this continued after May 2022 and that she inferred AB was not living at the rental unit.
53. Therefore, I find that as of May 27, 2022, the Landlord knew or ought to have known NL was an unauthorized occupant in possession of the rental unit.
54. As a result, after the Landlord was aware NL had been living in the rental unit for 60 days and did not bring an application for termination based on unauthorized occupancy, the Act deemed NL to be the tenant and AB's tenancy was terminated.
55. While I accept AB's evidence this was a confusing situation which she found hard, after the passage of 60 days, the Act deemed NL to be the Tenant.
56. Therefore, when the Landlord negotiated an agreement to terminate the tenancy with AB, her tenancy had already been terminated and the N11 Agreement was not a valid basis for the Eviction Order.
57. In the above circumstances, I find there was a serious error. NL's request to review is granted and the Landlord's application must be dismissed.

**It is ordered that:**

1. NL's Request to review Order LTB-L-053505-22 issued on November 10, 2022 is granted.
2. Order LTB-L-053505-22 issued November 10, 2022, is cancelled and the application filed by the Landlord is dismissed.

**June 7, 2023**

Rebecca Case

**Date Issued**

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
ON M7A 2G6



**File Number:** LTB-L-053505-22-RV

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

2023 ONLTB 26195 (CanLII)