



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

Citation: 10-12 ST.DENNIS DRIVE LTD. v Elouise Symister, 2023 ONLTB 37094

Date: 2023-05-16

File Number: LTB-L-040174-22

In the matter of: 501, 10 ST DENNIS DR
NORTH YORK ON M3C1E9

Between: 10 -12 ST.DENNIS DRIVE LTD. Landlord

And

Elouise Symister Tenant

Review Order

10-12 ST.DENNIS DRIVE LTD. (the 'Landlord') applied for an order to terminate the tenancy and evict Elouise Symister (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was resolved by order LTB-L-040174-22 issued on April 4, 2023.

On April 14, 2023, the Landlord requested a review of the order and that the order be stayed until the request to review the order is resolved.

On April 17, 2023, interim order LTB-L-040174-22-RV-IN was issued, staying the order issued on April 4, 2023.

This application was heard in by videoconference on May 4, 2023.

The Landlord's Representative, Richard Hissey and the Occupant of the rental unit attended the review hearing. The Occupant was not an authorized occupant of the rental unit. Lorraine Banks (property manager) and Nechor Guevarra (superintendent) were witnesses for the Landlord.

Determinations:

Review:

1. The order issued on April 4, 2023 makes a determination that the tenancy was 'transferred to the occupant' and the Landlord ought to have known the Tenant vacated sometime in October 2022- November 2022. The application was dismissed on the basis that the Landlord did not file an application under section 100 of the Act which deems a tenancy assigned if a landlord does not file an application to evict the unauthorized occupant within 60 days from the date of becoming aware a tenant vacated.
2. The Landlord requested the review of the order issued on April 4, 2023, claiming a serious error was made in the order because it was not supported by the evidence introduced at the February 16, 2023 hearing.
3. Based on the submissions made and having listened to the recording, I find that the Landlord has established that the Order issued on April 4, 2023 contains a serious error in finding a fact which would potentially change the outcome of the order. The review request is granted because of the following:
4. There was no nexus to the conclusion made in the order based on the evidence presented at the hearing of first instance that support the outcome of the order because:
 - a) the Occupant, who is NOT a party to this application, provided no corroborative documented evidence to support a finding that the Tenant vacated the rental unit nor did he provide a letter of authorization to allowed him to speak on the Tenant's behalf; The hearing recording only confirms that the Tenant 'is not here anymore', that they had fallout; and she "had not yet" returned back to the unit and "he didn't know whether she would come back". There was no evidence led that the unit Tenant transferred the tenancy to the Occupant on a temporary or permanent basis.
 - b) the Tenant, who is a party to the application, did not attend the hearing, although properly served with notice.
 - c) There was no evidence presented that indicate the Landlord ought to have known the Tenant vacated. The Occupant never informed the Landlord at any time before the hearing that the Tenant vacated, and never requested or entered into an agreement to occupy the rental unit. The Occupant also did not challenge the Landlord's assertion that they first became aware the Tenant vacated when raised during the course of the hearing. There was no evidence led by the Occupant to support the Member's conclusion the Landlord ought to have known the unit was assigned.
 - d) Based on the recording, there was also inconsistencies with the Occupant's testimony who did not identify a date the Tenant allegedly vacated. Based on the recording, the Occupant testified the Tenant vacated a month prior to the hearing which would be sometime in January 2023 then he stated she vacated sometime in October 2022. The Occupant's testimony also diverged from the hearing of first instance, because at the review hearing he stated she vacated in September 2022.

5. I find also the Member erred in jurisdiction, because the order relies on the wrong section of the Act because the application was dismissed on the basis that the unit was assigned inferring that it was not properly before the Board lacking jurisdiction. The application before the Board is not based on an application made under section 100 of the Act. The Landlord applied for an order terminating the tenancy for non-payment of rent under section 69 of the Act. There was no finding or consideration made on whether the Tenant was in possession of the rental unit when the application was filed which a material issue that the Member must consider.
6. Despite the Member's finding that the unit was assigned, the Tenant was in possession of the rental unit when the application was filed on July 18, 2022, therefore the Board had jurisdiction to consider the claim for non-payment of rent against Elouise Symister, the Tenant.
7. For these reasons, the review of Order issued on April 4, 2023 is granted and the application is heard denovo.

L1 Application:

Preliminary Issues:

Does the Tenant still have possession of the rental unit?

8. Yes. The Landlord did not receive any written or oral notice from the Tenant informing or confirming that she has vacated the rental unit nor that she gave up her right a possession of the rental by either subletting the unit temporarily or assigning the unit to another person permanently as corroborated by witness testimonies from Nechor Guevarra and Lorrain Banks. They also testified they never spoke to the Occupant about the Tenant having vacated.
9. The Occupant also testified that all the Tenant's property, except her cloths, remains presently in the rental unit which also supports a finding that the Tenant still has possession of the rental unit.

Is Shehu Moore a Tenant or Occupant?

10. An Occupant. There's no dispute tenancy agreement started in November 2015, and Shehu Moore's name does not appear anywhere on the agreement either as a tenant or occupant of the rental unit. Shehu Moore also testified he never met with an agent of the Landlord to talk about entering into a tenancy agreement. As such, I'm satisfied there's no written, oral or implied tenancy agreement between Shehu Moore with the Landlord.
11. Shehu Moore does not meet the definition of tenant as defined under the Act, which includes "a person who pays rent in return for the right to occupy a rental unit and includes

the tenant's heirs, assigns, and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being".

12. Shehu Moore, may have an interest in the outcome of these proceedings as an occupant, but he's not a party to this application.

Determinations:

13. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
14. As of the hearing date, the Tenant was still in possession of the rental unit.
15. The lawful rent is \$1,150.26. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$37.82. This amount is calculated as follows: \$1,150.26 x 12, divided by 365 days.
17. The Tenant has paid \$3,200.00 to the Landlord since the application was filed.
18. The rent arrears owing to May 31, 2023 are \$14,063.05.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
20. The Landlord collected a rent deposit of \$1,051.17 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
21. Interest on the rent deposit, in the amount of \$67.98 is owing to the Tenant for the period from November 1, 2018 to May 4, 2023.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act' and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$14,152.38 if the payment is made on or before May 27, 2023. See Schedule 1 for the calculation of the amount owing.

3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after May 27, 2023 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before May 27, 2023**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$15,234.25. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. The rent deposit and interest the Landlord owes on the rent deposit are deducted from the amount owing by the Tenant. See Schedule 1 for the calculation of the amount owing.
6. The Tenant shall also pay the Landlord compensation of \$37.82 per day for the use of the unit starting May 5, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before May 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 28, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
9. If the unit is not vacated on or before May 27, 2023, then starting May 28, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
10. 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 May 28, 2023.

May 16, 2023

Date Issued

Sandra Macchione

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 1-888-332-3234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 28, 2023 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.

*Note: When the Board directs payment-out, the Canadian Imperial Bank of Commerce will issue a cheque to the appropriate party named in this notice. The cheque will be in the amount directed plus any interest accrued up to the date of the notice

Schedule 1 SUMMARY OF CALCULATIONS

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before May 27, 2023

Rent Owing To May 31, 2023	\$17,166.38
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$3,200.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total the Tenant must pay to continue the tenancy	\$14,152.38

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing To Hearing Date	\$16,167.40
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$1,051.17
Less the amount of the interest on the last month's rent deposit	- \$67.98
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$15,234.25
Plus daily compensation owing for each day of occupation starting May 5, 2023	\$37.82 (per day)