



**Order under Section 100
Residential Tenancies Act, 2006**

Citation: Gamble v Bennett, 2023 ONLTB 29966

Date: 2023-04-11

File Number: LTB-L-063224-22

In the matter of: 613, 1638 Bloor Street West
Toronto Ontario M6P1A7

Between: Erika Gamble Landlord

And

Chris Alexander Tenant
Jason Bennett

Erika Gamble (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Bennett (the 'Tenant') and Chris Alexander the Unauthorized Occupant and for compensation for the use of the rental unit (A2 application).

This application was heard by videoconference on March 20, 2023.

Only the Landlord and her representative Nicole Fazzari attended the hearing.

As of 2:31 pm, the Tenant nor Unauthorized Occupant were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations and Reasons:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. This application is about what happens when a Tenant vacated the rental unit, leaving an occupant behind in the rental unit and the Landlord did not enter into a tenancy agreement with the Unauthorized Occupant.
3. The Tenant vacated the unit prior to the date the Landlord filed the application.

4. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed.
5. The Landlord's disclosure package included the lease agreement and communications.

The A2 Application

6. The Landlord's A2 application was filed on October 21, 2022, within 60 days of discovering the unauthorized occupant as required by s.100(2) of the Residential Tenancies Act, 2006 (the 'Act').
7. The Landlord testified that the lease agreement was between the Landlord and two Tenants Jason Bennett (JB) and Pierre-Joseph Grignon (PG), with the tenancy commencing June 1, 2021.
8. The Landlord then said that PG, after only about one month into the tenancy, contacted the Landlord to advise that things were not working out, would be vacating but continued to pay rent to the end of the tenancy, May 31, 2022. JB remained in the unit as the sole Tenant.
9. Around June 2, 2022 the Landlord received a complaint about the use of the party room and became aware that Chris Alexander (CA) was living at the rental unit.
10. The Landlord testified that JB moved out of the rental unit in sometime around September 26, 2022 without giving 60 days notice nor notice to terminate the tenancy. As the lease stipulated that any guest of the Tenant must move out with the Tenant, she assumed CA had also vacated.
11. Around October 2, 2022 the Landlord said she went to the rental unit and was surprised to see that CA was still living there.
12. The Landlord asserts that at no time, did she enter into a new lease agreement with CA and when the Tenant vacated, CA became an Unauthorized Occupant. The Landlord also said that in an email exchange with JB, he confirmed that "Chris was supposed to leave at the end of the month as well..go to your unit and kick him out I'm done with this".

Analysis

13. The Landlord became aware that the Tenant vacated the rental unit around September 26, 2022.
14. As I explained at the hearing what the Board needs to know on applications such as this is: when did the Tenant move out; when did the Landlord know the Tenant moved out; was the application filed within 60 days of the Landlord discovering the Tenant had moved out; and did the Landlord enter into a new tenancy agreement with the Occupant?

15. The reason the Board needs to know when the Tenant moved out is because this is the triggering event that turns a legal occupant (which is what a guest or roommate is) into an unauthorised occupant. In the language of the Act, by moving out the Tenant “transferred occupancy” to the Occupant which is why he suddenly became an unauthorised occupant even though the Landlord knew he was living there. In other words, what the provisions of the Act are intended to deal with is control of the rental unit. Once the Tenant moved out it was the Occupant who was in possession and control of the unit. It is this unauthorised transfer of control that the Act seeks to remedy.
16. Subsection 100(1) says:

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.
17. As can be seen from the wording of this provision, not all transfers of control of the unit are improper. Transfers that occur with the Landlord’s consent under s. 95 or s. 97 are authorised transfers. The ones s. 100 addresses are transfers of control of the unit where the Landlord has not consented.
18. The other reason the date the Tenant moved out of the unit is important is because that is also the triggering date for compensation. Pursuant to s. 103 of the Act the Landlord can apply for compensation for use of the unit by an unauthorised occupant. Prior to the Tenant moving out the Landlord had no legal right to pursue the Occupant for rent or compensation because he was not yet an unauthorised occupant.
19. Based on the evidence before the Board and on a balance of probabilities, I find the Tenant transferred occupancy of the rental unit to the Occupant on September 26, 2022 in a manner that was not authorized by the Act and the Landlord did not enter into a new lease agreement with the Occupant.
20. I do not believe that section 83 of the Act applies to this application as the Landlord does not seek to evict the tenant; rather the Landlord seeks to evict the Occupant. Even if that were not the case, I would not grant additional relief beyond the Board’s standard order. The Occupant has known since September 26, 2022 that the Tenant had moved out and it has been more than five months since this application was filed. The Occupant has had ample time to arrange to move.

Daily compensation

21. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant. It is the Landlord’s submission that the Unauthorized Occupant owes some \$18,000.00 in rent arrears from October 2022 to March 31, 2023.

22. The Landlord is also entitled to per diem compensation pursuant to subsection 100(3) of the Act, based on a \$3,000.00 monthly rent (per diem compensation = \$3,000.00 x 12 months / 365 days = \$98.63/day).
23. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
24. There is no last month's rent deposit.
25. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of September 26, 2022.
2. The Unauthorized Occupant shall move out of the rental unit on or before April 30, 2023.
3. If the unit is not vacated by April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (the 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 after May 1, 2023.
5. The Occupant shall pay to the Landlord \$18,000.00, which represents outstanding daily compensation for the use of the unit from October 1, 2022 to March 31, 2023.
6. The Occupant shall also pay to the Landlord \$98.63 per day for compensation for the use of the unit from April 12, 2023 to the date he moves out of the unit.
7. The Occupant shall also pay to the Landlord \$201.00 for the cost of filing the application.
8. If the Occupant does not pay the Landlord the full amount owing on or before April 30, 2023, he will start to owe interest. This will be simple interest calculated from May 1, 2023 at 6.00% annually on the balance outstanding.

April 11, 2023

Date Issued

Dana Wren

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 1, 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

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