



**Order under Section 100 (and 91)
Residential Tenancies Act, 2006**

Citation: Valery Properties v Mclsaac, 2023 ONLTB 28742
Date: 2023-03-31
File Number: LTB-L-078906-22/ SOL-25067-21

In the matter of: 04, 14 Derby Street
Hamilton Ontario L8W3T5

Between: Valery Properties Landlord

And

Brandon Mclsaac(BM) and Karen Mclsaac(KM) Tenants

And

Bill Davies(BD) Unauthorized
Occupant

2023 ONLTB 28742 (CanLII)

Valery Properties (the 'Landlord') applied for an order to terminate the tenancy of Bill Davies (the Unauthorized Occupant), and for compensation for the use of the rental unit. (A2 application)

The Landlord also applied for an order to terminate the tenancy and evict the Tenants because the Tenants did not pay the rent that the Tenants owe. (L1 application)

This application was heard by videoconference on August 29, 2021. Only the Landlord attended the hearing.

As of 9:20am, neither the Tenant nor the Unauthorized Occupant were present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application

1. At the hearing, the Legal Representative requested to withdraw the L1 application as the Landlord sought for an order to terminate the tenancy of Bill Davies (BD) (the Unauthorized Occupant), and for compensation for the use of the rental unit.

2. Pursuant to s. 200(4) of the *Residential Tenancies Act, 2006*, S.O., 2006 c.17, the Board consents to the withdrawal.

A2 Application

3. The Landlord testified that she found out on November 11, 2021, that the Tenant KM passed away sometime in October 2021, after BM passed away in July 2021. The monthly rent was \$1194.34, and the Unauthorized Occupant BD has been living in the rental unit since October 2021, after the passing of Tenant KM.
4. The Landlord testified that there had been no assignment or subletting of the tenancy, as set out under section 100 of the Residential Tenancies Act, 2006 (the 'Act'), and that BD is, therefore, an unauthorized occupant.
5. The Landlord testified that she learned that BD is the son of Tenant KM, but BD was never a tenant of the rental unit and has never paid any rent to the date of this hearing.
6. The Landlord claims that she had made efforts to communicate with BD and contacted the police about BD's behaviour, but BD has yet to respond to the Landlord and has refused to move out.
7. Based on the uncontested submissions, I find that BD does not meet the definition of "tenant" in section 2 of the Act and Ontario Regulation 516/06, section 3 (both for definition of "tenant"), and thus had no right to remain in the rental unit after the tenancy terminated 30 days after KM's death in accordance with section 91 of the Act. As the Landlords indicated KM passed sometime in October 2021, I have deemed the date of passing for the purpose of this application as the last day in October 2021, meaning the tenancy terminated on November 30, 2021.
8. As a result, I also find the transfer of the occupancy of the rental unit to BK was done in a manner that was not authorized by the Act. The Landlords did not enter into a tenancy agreement with BK, the Unauthorized Occupant.
9. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed, which was November 16, 2021.
10. I find the Landlords are successful with their A2 application, and I will order the termination of the tenancy, as sought by the Landlords.
11. The Landlords are also entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant starting on December 1, 2021, the day after the tenancy terminated. Based on the Monthly rent, the daily rent/compensation is \$39.27. This amount is calculated as follows: \$1,194.34 x 12, divided by 365 days.
12. Finally, I find as well that the tenancy for the Tenant ended 30 days after her passing, which would establish the termination date (per section 91 of the Act) as being November 30, 2021.

13. 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 as of November 30, 2021.
2. The Unauthorized Occupant Bill Davies must move out of the rental unit on or before April 11, 2023.
3. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
4. The Unauthorized Occupant shall pay to the Landlord \$19,045.95. This amount includes rent arrears which represents compensation for the use of the unit from December 1, 2021 to March 31, 2023, the date of this order (485 days), and the cost of filing the application.
5. The Unauthorized Occupant shall also pay to the Landlord \$39.27 per day for the use of the unit starting April 01, 2023 until the date the Tenant moves out of the unit.
6. The Unauthorized Occupant shall also pay to the Landlord \$186.00 for filing the Landlord's cost of filing this application.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.
8. If the unit is not vacated on or before April 11, 2023, then starting April 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 April 12, 2023.

March 31, 2023

Date Issued



Percy Laryea

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 October 12, 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.