



## **Order under Section 77 Residential Tenancies Act, 2006**

**Citation:** Ottawa Community Housing Corporation v Ndira, 2023 ONLTB 26555

**Date:** 2023-03-30 **File**

**Number:** LTB-L-080917-22

**In the matter of:** A, 2483 IRIS ST  
OTTAWA ON K2C1C7

**Between:** Ottawa Community Housing Corporation Landlord

**And**

Jean Louis Ndira Tenant

Ottawa Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Jean Louis Ndira and (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

A hearing was held to consider this application.

This application was heard by videoconference on March 6, 2023. Only the Landlord's legal representative Laura Clark attended the hearing. As of 1:43pm, the Tenant was 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:**

1. The Landlord's L3 application was filed on December 23, 2022 and alleges that the Landlord and the Tenant entered into an agreement to terminate the tenancy effective November 30, 2022. The N11 notice lists Jean Louis Ndira and Yves Nadira as Tenants.

2. On February 6, 2023 the Board issued an endorsement to the parties directing the matter to a hearing as only one of the two named Tenants signed the N11 notice.
3. The rental unit is a rent geared to income unit (RGI). On April 29, 2022 the Tenants submitted their annual income and assessment forms for their annual RGI calculation. In the assessment form, both Tenants consented to remove Yves Nadira as a Tenant of the rental unit. As of May 1, 2022 only Jean Louis Ndira was listed as a Tenant of the rental unit. As such, the application is amended to remove Yves Nadira as a Tenant and/or responding party.

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4. The Landlord confirmed that the Tenant (Jean Louis Ndira) vacated the rental unit on December 5, 2022 but advised the Landlord that his brother and former co-tenant (Yves Nadira) had entered the unit, barricaded himself in one of the bedrooms and refused to vacate the unit.
5. As of the hearing date, the Tenant's brother continues to reside in the unit. The Landlord's representative requested an order terminating the tenancy with a Sheriff clause to evict the un-authorized occupant.

Analysis:

6. The Landlord's application is filed pursuant to section 77 of the *Residential Tenancies Act, 2006* (The Act) which states:

**77** (1) A landlord may, without notice to the tenant, apply to the Board for an order terminating a tenancy and evicting the tenant if,

- (a) the landlord and tenant have entered into an agreement to terminate the tenancy; or
  - (b) the tenant has given the landlord notice of termination of the tenancy.
7. There is no dispute that the Landlord and the Tenant agreed to terminate the tenancy and that the Tenant vacated the rental unit on December 5, 2022. As such, I find that the tenancy terminated on this date.
  8. It is also uncontested that the Tenants jointly agreed to remove Yves Nadira as Tenant and/or Occupant of the rental unit on April 29, 2022. As such, the Tenant

Jean Louis Ndira was permitted to terminate the tenancy solely and Yves Nadira was not a lawful Tenant after this date.

9. With respect to the current occupant residing in the rental unit section 100 of the Act states in part:

**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.

10. As of the hearing date, the Landlord had not filed an A2 to terminate the tenancy and to evict the unauthorized occupant. The evidence of both parties indicates that the Tenant vacated the unit in accordance with the agreement and that the current occupant entered the unit and refused to vacate the unit.

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11. Pursuant to section 8(2) of the Act, assignment and subletting a rental unit is exempt for RGI units, such as the one in question. Therefore, the current occupant is perhaps best described as a squatter who has no lawful right to continue to occupy the rental unit after the tenancy terminated

12. However, while I appreciate the concerns of the Landlord, the L3 application filed pursuant to section 77 of the Act is not the appropriate application to address unauthorized assignments or sublets under the Act or to evict unauthorized occupants. As such, the Landlord's request for an order evicting the current occupant is denied.

**It is ordered that:**

1. The tenancy between the Landlord and Tenant is terminated as of December 5, 2022. The date the Tenant vacated the rental unit.

**March 30, 2023**

**Date Issued**

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**Fabio Quattrociochi**

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 1-888-3323234.

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