



Order under Section 100
Residential Tenancies Act, 2006

Citation: Desaulniers v Cunningham, 2023 ONLTB 24797

Date: 2023-03-10

File Number: LTB-L-042410-
22

In the matter of: 2-25 Louise Street
Tilbury, ON N0P2L0

Between: Justin Desaulniers Landlords
Louanne Desaulniers

And

Paul Cunningham Occupant

And

Tom Cunningham Tenant

Justin Desaulniers and Louanne Desaulniers (the 'Landlord's) applied for an order to terminate the tenancy of Tom Cunningham (the 'Tenant') because he transferred occupancy of the rental unit to Paul Cunningham (the 'Occupant'). The Landlord also applied for compensation for the use of the rental unit.

This application was heard by videoconference on March 3, 2023.

Only the Landlords attended the hearing.

As of 9:30 am, the Tenant and the 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:

Amendment Request

1. The Landlords had initially filed an A1 application requesting an order from the Board to determine whether or not the Act applies. The application was initially considered on an expedited basis on February 7, 2023. The Occupant did not attend at that time.
2. After having heard the uncontested evidence of the Landlords, I had determined that the matter should be reconvened in order to determine whether or not the Landlord's application should be amended. Interim Order LTB-L-042410-22 was issued to all parties subsequent to the February 7, 2023 hearing date.
3. At the March 3, 2023 video conference, the Landlords requested that their application be amended from an A1 application to an A2 application to make a determination under s. 100 of the *Residential Tenancies Act, 2006* (the 'Act').
4. Having considered Rule 15 of the Board's *Rules of Procedure*, I determined that all parties were provided the Interim Order ahead of the March 3, 2023 hearing date and were aware of the fact that I would be considering an amendment to the application. On that basis, I find that the Occupant was given an opportunity to participate at the March 3, 2023 hearing but had not attended to do so.
5. Further, having considered the evidence from the Landlords concerning the behaviour of the Occupant since the Landlords discovered him living in the unit, I determined that there would have been significant prejudice to the Landlords had they not been given an opportunity to request an amendment to their application.
6. Further, on the basis of the Landlords' uncontested evidence, I am satisfied that the amendment was necessary and was requested in good faith.
7. As such, I am satisfied on a balance of probabilities that the amendment request by the Landlord's is proper, and that the application is amended to an application under s. 100 of the Act.

Unauthorized Occupation

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for the termination of the tenancy, the eviction of the Occupant and the claim for daily compensation. Therefore, the Occupant is evicted and will be ordered to pay daily compensation to the Landlords from July 23, 2022, to March 3, 2023.
9. The Occupant was in possession of the rental unit on the date the application was filed.
10. On May 11, 2011, Roy Cunningham and the Tenant entered into a residential tenancy agreement with The Gary Mackie Organization Inc. for the unit in question.
11. On January 31, 2014, the residential complex was sold to the Landlords, and they became the Landlords for the individuals as outlined above.
12. Prior to this incident, Roy Cunningham vacated the unit.

13. On July 22, 2022, the Landlords were advised by the Tenant's Power of Attorney and Executor that the Tenant had passed away that day.
14. On July 23, 2022 the Landlords had arrived at the unit to change the locks when they had discovered the Occupant in the unit. The Landlords had determined through various channels that the Occupant had been released to the unit on a bail condition.
15. The Occupant would not let the Landlords into the unit. The Landlords contacted police and were advised that the issue is a Landlord and Tenant Board matter and should be dealt with here.
16. The next question to consider is whether the Landlords entered into a new tenancy agreement with the Occupant? The reason this is an issue is because s. 104 of the Act which says:
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 Landlords never entered into a tenancy agreement with the Occupant. They never accepted any rent nor did the Occupant attempt to pay any rent. Neither party approached one another about entering into a lease.
18. Further, the Landlords filed their application on July 27, 2022, within 60 days after having discovered the Occupant in the unit as required under s. 100(2) of the Act.
19. Given all of the above I am not prepared to find that the Landlords entered into a tenancy agreement with the Occupant.

Daily Compensation & Costs

20. Rent for the unit paid for by the Tenant was \$758.08 per month. The Landlords are entitled to compensation for the use and occupation of the rental unit by the Occupant for the period starting July 23, 2022 to the date of this order for a total of \$5,582.08.
21. The Landlord incurred costs of \$53.00 for filing the application and is entitled to reimbursement of those costs.
22. There is no last month's rent deposit.

Section 83 Considerations

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- 23. Section 83 of the Act does not apply in this circumstance because the Landlords application does not seek to evict the Tenant but 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 at least July 22, 2022 that the Tenant, his father, had passed away. The Occupant has had ample time to arrange to move.
- 24. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

- 25. The Tenancy between the Landlords and the Tenant is terminated as of August 22, 2022, in accordance with s. 91(1) of the Act.
- 26. The Occupant shall move out of the unit on or before March 21, 2023.
- 27. The Occupant shall pay to the Landlords \$5,582.08. which represents outstanding daily compensation for the use of the unit from July 23, 2022 to March 3, 2023.
- 28. The Occupant shall also pay to the Landlord \$24.92 per day for compensation for the use of the unit from March 4, 2023 to the date he moves out of the unit.
- 29. The Occupant shall also pay to the Landlord \$53.00 for the cost of filing the application.
- 30. The total amount the Occupant owes the Landlord is \$5,635.08.
- 31. If the Occupant does not pay the Landlord the full amount owing on or before March 21, 2023, the Occupant will start to owe interest. This will be simple interest calculated from March 22, 2023 at 5.00% annually on the balance outstanding.
- 32. If the unit is not vacated on or before March 21, 2023, then starting March 22, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
- 33. 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 March 21, 2023.

March 10, 2023

Date Issued

Jagger Benham

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 September 22, 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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