



**Order under Section 94
Residential Tenancies Act, 2006**

Citation: IMH POOL XVII LP v St Romain, 2023 ONLTB 20459

Date: 2023-02-16

File Number: LTB-L-019548-22

In the matter of: 202, 1340 DANFORTH RD
SCARBOROUGH ON M1J1G2

Between: IMH POOL XVII LP Landlord

And

Bernardine St Romain Tenant
Rohan B Joseph

IMH POOL XVII LP (the 'Landlord') applied for an order to terminate the tenancy and evict Bernardine St Romain and Rohan B Joseph (the 'Tenant') because:

- the rental unit is the superintendent's premises and the Tenant's employment as superintendent has ended.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 7, 2023.

The Landlord's Legal Representative Prarthana Bhat and the Tenant attended the hearing.

Determinations:

1. The Tenants were employed as superintendents, and as part of their employment, were provided with accommodation in a rental unit used for superintendents but as the Tenants requested a three bedroom unit, they paid an additional \$200.00 per month to the Landlord.
2. It was undisputed that the Landlord terminated the employment of the Tenants effective January 26, 2022. A copy of the termination letter was tendered into evidence at the hearing.
3. Section 93 of the *Residential Tenancies Act*, 2006 (the 'Act') provides:

(1) If a landlord has entered into a tenancy agreement with respect to a superintendence premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated.

(2) A tenant shall vacate a superintendent's premises within one week after his or her tenancy is terminated.

(3) a landlord shall not charge a tenant rent or compensation or receive rent or compensation from a tenant with respect to the one week. Mentioned in subsection (2).

4. Pursuant to subsection 93(1) of the *Act*, based on the evidence and the acknowledgement of the Tenants, I find the tenancy terminated on January 26, 2022.
5. Pursuant to the *Act*, the Tenants had seven days to vacate the rental unit and they were not required to pay rent for that seven day period.
6. The evidence before me was that the Tenants have not vacated the superintendents premises as they state they are on a wait list for subsidized housing and they cannot afford market rent. The Tenants state that they wish to move out of the unit but simply have nowhere else to go.
7. The Landlord's Legal Representative requests daily compensation for each day the Tenants stayed in the rental unit after February 2, 2022 – being one week after the termination of employment and tenancy.
8. There is no explicit authority in the *Act* to order that a tenant whose tenancy was terminated under s.93 of the *Act* pay rent or compensation for use of the unit if the tenant does not vacate the unit by one week after the tenancy terminated. The provisions in the *Act* with respect to compensation payable by an overholding tenant refer only to tenancies that are terminated by notice, by agreement, or by Board order. Termination of a former superintendent's tenancy occurs by operation of the *Act*. However, as was argued by the Landlord's representative, s.93 of the *Act* provides for a rent/compensation-free period of a week after the termination of the tenancy. There would be no need to provide for this rent/compensation-free period if no rent or compensation was payable by a former superintendent thereafter. I therefore believe that the *Act* implicitly authorizes the Board to order that a former superintendent pay compensation for use of the unit after the one week rent/compensation-free period has expired.
9. The Landlord's Legal Representative submitted that the comparable market rate for the rental unit as at February, 2022 was \$2,124.16 per month. It was further submitted that as at February 3, 2023, the comparable market rate for the rental unit increased to \$2,485.00 per month. The Tenants did not dispute these amounts. The evidence before me was that a new tenancy was not created after the Tenants' employment ended. As a result, I find the lawful monthly rent to be \$2,124.16.
10. The Tenants have stayed in the rental unit since February 3, 2022 and are still in possession of the rental unit. As at the date of this hearing, the Tenants have stayed in the rental unit for 369 days. The Landlord is entitled to an order for 369 days at the rate of \$69.84 a day ($\$2,124.16 \times 12/365$) for a total of \$25,770.96.
11. There is no last month's rent deposit.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

13. The Tenants testified that they have 3 children, ages 13, 10 and 4 residing with them and would require additional time to vacate the premises. The Tenants state that they may be able to move up the wait list for subsidized housing in light of their circumstances. After considering all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006*, although the Tenants have remained in the superintendent's premises for over a year since their employment was terminated, I find it would be appropriate to postpone the eviction until March 31, 2023 which will afford the Tenants some additional time to locate alternative accommodations.
14. The Tenants submit that while the Tenant Rohan Joseph earns approximately \$1,800.00 biweekly, the Tenant Bernadine St. Romain is studying full-time and that the Tenants used any rent payments due for daily living expenses such that they would need additional time to pay any compensation ordered. The Landlord's Legal Representative submitted that the Tenants have not paid any rent and the compensation is substantial.
15. This order contains all of the reasons in this matter and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as at January 26, 2022.
2. The Tenant must move out of the rental unit on or before March 31, 2023.
3. The Tenants shall pay to the Landlord \$25,770.96 in compensation for their use of the unit from February 3, 2022 to the date of the hearing, February 7, 2023.
4. The Tenants shall pay to the Landlord \$69.84 per day for compensation for the use of the unit from February 8, 2023 to the date the Tenants move out of the unit.
5. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing this application.
6. If the Tenants do not pay the Landlord the full amount owing on or before March 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.
7. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
8. 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 1, 2023.

February 16, 2023

Date Issued

Heather Chapple

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 of the

Tenant expires on October 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.