



**Order under Section 69
Residential Tenancies Act, 2006**

Citation: FOUNDATION CAPITAL HOLDINGS INC v Lewis, 2023 ONLTB 19544

Date: 2023-02-15

File Number: LTB-L-015396-22

In the matter of: 2, 975 BARTON ST E
HAMILTON ON L8L3C8

Between: FOUNDATION CAPITAL HOLDINGS INC Landlord

And

Arlie Lewis Tenant

FOUNDATION CAPITAL HOLDINGS INC (the 'Landlord') applied for an order to terminate the tenancy and evict Arlie Lewis (the 'Tenant') because the unit was given to the Tenant for the term of the Tenant's employment which has now ended.

This application was heard by videoconference on January 26, 2023.

The Landlord's Representative Michael Cameron and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must move out of the rental unit on or before February 26, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 14, 2022, the Landlord gave the Tenant an N8 notice of termination. The notice of termination states the Tenant's unit was available to her as a condition of her employment and that employment has ended.

The Tenant's Employment – The Evidence

4. The parties disagree about whether the Tenant was ever a superintendent employed by the Landlord and whether the rental unit was rented to the Tenant for the term of the Tenant's employment.
5. It is undisputed that upon purchasing the rental property the Landlord's Representative sent the Tenant a letter on March 14, 2022. That letter was entered into evidence and says in part:

“Please be advised that I have been retained and act as agent for Foundation Capital Holdings Inc. As you are aware my client has recently purchased the property and are now the Landlords.

I have been informed by my client that your position has been deemed surplus to their needs as they have a full-time property manager completing most tasks and there is a duplication of effort.

... As you can see from the above noted legislation you have seven days to vacate your unit..."

6. The Landlord also introduced into evidence a document they say they received from the previous Landlord. This document is signed with what appears to be the Tenant's signature, lists her unit number, and says, "Rent 294.25/Month *Superintendent unit is ½ price".
7. The Tenant testified that she has never seen that document before, and her signature must be forged. The Tenant also testified that the copy of the document that the Landlord sent to her is blurry and she could not read it properly. I will note that the copy of the same document sent to the Board was not corrupted in anyway and was readable. The Tenant chose to call into the hearing on the phone, so she was not able to see the document when I displayed it on the screen.
8. The Landlord also introduced into evidence a rent ledger that was received from the previous landlord during the purchasing of the rental property. That ledger lists three months of the Tenant's payments from December 2021 to February 2022. The amount that the Tenant was paying in rent is \$294.25. This is the exact same amount listed on the other documentation presented by the Landlord that lists that amount as the superintendent's rate.
9. The Tenant submits that the Landlord's records are wrong, and she has actually been paying rent in the \$580.00 range. The Tenant introduced into evidence a rent receipt from each year from 2014-2021. The Tenant did not submit all her rent receipts, but rather submitted one or two receipts from each year. These receipts show the rent going up slightly each year. The Tenant also introduced into evidence an e-transfer receipt for rent she sent to the new Landlord in 2022.
10. The page of the ledger that was introduced into evidence by the Landlord also includes the rent history of a few other tenants in the rental property. All those tenants are paying significantly more rent than the Tenant. The Landlord submits that this ledger was provided to them by the previous landlord during the purchasing of rental property and the income reported was fundamental to the deal going through. The Landlord submits that the previous landlord would have no reason to falsify the Tenant's rent and make it lower than what she was paying. The Landlord argued that the previous landlord had an obligation to accurately represent their income during the sale. Additionally, even if the previous Landlord did falsify their records there is no reason that they would falsify them to make the property appear less profitable than it actually was. It would be in the previous Landlord's best interest for the rental property to appear profitable when trying to sell it.
11. The Landlord called their current Property Manager, Cindy Czerwinski (C.C) as a witness. She testified that she was told from the previous Landlord that the Tenant has all the keys for the rental property and looks after the building.

12. C.C testified that she got all the keys for the rental property from the Tenant. The Tenant would initially not give a clear answer regarding what if any keys she possessed when the new Landlord took over the building but eventually stated that she did have the keys, but she was not sure what they opened and she only had the keys because the previous landlord asked her to hold onto them and give them to the new Landlord as a favour.
13. C.C testified that she is familiar with all the rents paid in the building and other tenants who have been in the building for the same amount of time as the Tenant are paying around \$900.00, not the \$500.00 range that the Tenant claims to be paying.
14. C.C testified that she is the person who delivered the termination letter to the Tenant and at that time the Tenant made no mention of not being the superintendent.
15. The parties agree that at no time prior to the hearing did the Tenant mention to the new Landlord that their information was wrong and she was not in fact the superintendent. The Tenant testified that the reason for this is because she got legal advice that told her not to mention it until the hearing.
16. The Tenant also introduced into evidence an email that she alleges is from the previous Landlord. This email has a timestamp of 8:56a.m. the morning of the hearing. This email says the following:

“To whom it may concern,

I am the former owner of 975, 981, 983 Barton St East, L8L 3C8.

Please be advised that at no time during my ownership of this property was there ever any contract, written or verbal, stating that Arlie’s apartment was conditional on her providing custodial or any other services at the property.

As a trusted tenant who cared about the building, Arlie was provided with access to the basement for storage and laundry to use as she saw fit.

Sincerely,

Michael Jahn”

17. I asked the Tenant why there was no initial email from the Tenant to the previous Landlord included in the email thread and the Tenant replied that she called the Landlord first and then he sent this email.
18. The Tenant also claimed that she could produce the previous landlord as a witness. I asked the Tenant if he was present on the video conference line, and she replied that she would need to call him to see if he was available. She also stated that her initial intention was not to call him but she now wanted to call him. As the previous landlord was not already present, the Tenant had not initially been intending to call him, and the Tenant had no concrete information about whether he would even be available, I did not hold the matter down for the Tenant to try and secure this witness.

19. The Tenant called as a witness Lisa Place (L.P). L.P testified that she is a good friend of the Tenant and fellow tenant at the rental property. L.P testified that she has never heard the Tenant mention being the superintendent or seen her doing any superintendent duties.
20. I will note that L.P was present in the same room as the Tenant throughout her entire testimony. The Tenant did not mention that she had a witness in the room with her, however the Tenant was self-represented, and I did not ask her at the outset of the hearing whether she was calling any additional witnesses besides herself. As such, despite the Landlord's objection, I did permit L.P to testify.

21. The Tenant's Employment – Analysis

22. The *Residential Tenancies Act* ('the Act') states the following:

Termination of tenancy

93 (1) If a landlord has entered into a tenancy agreement with respect to a superintendent's premises, unless otherwise agreed, the tenancy terminates on the day on which the employment of the tenant is terminated. 2006, c. 17, s. 93 (1).

Same

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

23. For the reasons that follow, I find on a balance of probabilities that the Tenant was the superintendent of the rental property.
24. The Tenant is asking me to believe not just that the Landlord has made a mistake about her being a superintendent but that either the new Landlord or the old Landlord forged a fake document with her signature which lists the Tenant as a superintendent and forged a rent ledger.
25. I think it is more likely than not that the Landlord's documents are legitimate. I agree with the Landlord that the previous Landlord would have no reason when selling the property to falsify the rent ledger to make it appear that the Tenant is paying less rent than she was. Additionally, the Landlord's documents are internally consistent and show that the Tenant paying what is agreed to in the signed documentation. It is also not clear why the Landlord would pick this Tenant seemingly at random and concoct a story and falsify documents to say that the Tenant is the superintendent.
26. I found the evidence that the Tenant was in possession of all the keys for the rental property to be very persuasive that she is in fact the superintendent.
27. I also have no credibility concerns with the testimony of the Landlord's current property manager that she heard from the previous Landlord that the Tenant was the superintendent.
28. Additionally, I find it very peculiar that the Tenant did not raise with the Landlord that they were mistaken about her being the superintendent until the hearing. If there was a genuine

misunderstanding, the reasonable thing for the Tenant to have done would be to immediately go to the Landlord

29. In contrast to the Landlord's evidence that I found credible, reliable, and persuasive, I have serious concerns about the evidence led by the Tenant. First, the rent receipts submitted by the Tenant do not list the Landlord's name or company name (other than a signature at the bottom), and the cheques do not have any official watermark or notations of the Landlord. Second, I found it strange that the Tenant would receive an email from the previous Landlord mere minutes before the hearing and that there is no email thread. There is simply one email from the Landlord stating the exact information which would be a defence to the Landlord's case. The Tenant also stated that she called the Landlord to ask for the email to be sent and then later said that she was not sure whether the previous Landlord was available to be a witness. If the Tenant spoke to him the morning of the hearing, or in the days leading up to the hearing, it seems reasonable that the Tenant would have asked the previous Landlord to come and be a witness for her. Finally, the Tenant did not provide her testimony about the keys she possessed in a forthright manner.
30. I found the testimony of the Tenant's good friend L.P to provide little insight. L.P has no firsthand knowledge of the Tenant's dealings with the Landlord and only knows what the Tenant has told her. L.P's testimony was also in direct contrast with documentary evidence that I have already established that I found to be reliable and persuasive.
31. For those reasons I find that the Tenant was a superintendent, and that the rental unit was rented to the Tenant for the term of the Tenant's employment. As the Tenant's employment has been terminated, she must vacate the rental unit.

Relief from Eviction

32. The Tenant requested that the eviction be delayed or denied because she has lived in the rental building for a significant period, has a disability, and has nowhere else to go.
33. The Landlord is opposed to any delay of eviction.
34. I have considered that the Tenant's employment has been terminated, that the Tenant has already overstayed the termination of her employment by approximately 10 months, and that she has been significantly paying below market rent to her landlord since termination. I have also considered the individual circumstances of the Tenant in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). I ultimately 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. The Tenant must move out of the rental unit on or before February 26, 2023.
2. If the unit is not vacated on or before February 26, 2023, then starting February 27, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

3. 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 February 27, 2023.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before February 26, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 27, 2023 at 5.00% annually on the balance outstanding.

February 15, 2023

Date Issued

Amanda Kovats
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 August 27, 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.