



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

Citation: North Edge Properties Ltd v Gibbons, 2023 ONLTB 18369

Date: 2023-02-08

File Number: LTB-L-055407-22

In the matter of: 112-25 Mabelle Avenue
Toronto, ON M9A 4Y1

Between: North Edge Properties Ltd. Landlord

And

Rex Pickett Gibbons Tenant

North Edge Properties Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Rex Pickett Gibbons (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 January 18, 2023.

The Landlord's agent Maria Fotiadis, the Landlord's Legal Representative Geoff Paine and the Tenant attended the hearing.

Determinations:

Adjournment Request

1. Prior to the hearing, the Tenant requested an adjournment of the matter in order to seek legal advice as he submits he had just received the documentation regarding the hearing the week prior.
2. Having reviewed the Board's documentation, I had determined that the Tenant was served with the Notice of Hearing on December 27, 2022, as it had been sent by mail on December 22, 2022. The Tenant submitted that the residential complex has issues with mail but could not elaborate how this issue would have prevented him from getting the Notice of Hearing.
3. Based on the fact that the Tenant had been served with the Notice of Hearing three weeks prior and had admitted to receiving the Landlord's employment termination letter of September 19, 2022, I found that the Tenant had ample opportunity to seek legal advice prior to the hearing and the adjournment was denied.

Hearing

4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated, and the compensation is awarded as claimed
5. Entered into evidence was an Agreement for Live-In Superintendent's Services letter dated August 13, 2022 signed by the Landlord's agent and the Tenant. The letter outlines that the Tenant was permitted to occupy the unit until his employment was terminated.
6. The Landlord terminated the employment of the Tenant on September 19, 2022. The letter that was sent to the Tenant on September 19, 2022 was entered into evidence. The Tenant has not vacated the superintendent's premises and continues to reside in the unit with his girlfriend and roommate.
7. The Tenant does not dispute that he was employed as a superintendent and that his employment was terminated.
8. That said, the Tenant alleges that his employment was terminated improperly as the Landlord had requested a CPIC report after he had already been employed. Further, once his employment was terminated he had tried to pay the rent to the Landlord but was refused.

Analysis

9. The relevant portions of the *Residential Tenancies Act, 2006* (the 'Act') are as follows:

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.

(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 period mentioned in subsection (2).

94 The landlord may apply to the Board for an order terminating the tenancy of a tenant of superintendent's premises and evicting the tenant if the tenant does not vacate the rental unit within one week of the termination of his or her employment.

10. Based on the evidence I have considered I find that the employment dispute as raised by the Tenant is an issue for another forum. Issues of wrongful termination of employment are irrelevant for this ground for eviction (See *Onucki v. Fudge* [1990] O.J. No. 2175 (Ont. Div. Ct)). The role of the adjudicator in this matter is to determine whether the Tenant was employed as a superintendent, whether his employment was terminated, and whether he failed to vacate the superintendent's premises.
11. On each of these issues, there is no dispute by the parties that these three elements have been met and I find on a balance of probabilities that the Landlord has met its burden of proof.

12. The Tenant was employed as a superintendent and is living in a “superintendent’s premises” as defined under s. 2 of the Act. On September 19, 2022, the Tenant’s employment with the Landlord was terminated and the Tenant had until September 26, 2022 to vacate the unit. The Tenant did not vacate the unit and remains in the unit as of the date of the hearing.
13. The Tenancy will be terminated on February 28, 2023 to give the Tenant and the other occupants in the unit time to vacate the unit.

Daily Compensation

14. The Landlord seeks daily compensation for the unit from September 27, 2022 until the Tenant vacates the unit. The Landlord submitted that the market rent for this unit in the residential complex is \$1,500.00.
15. Despite the unit having been provided to the Tenant for free for his employment, I find the market rent requested by the Landlord to be reasonable.
16. In accordance with s. 93(3), I find that the Landlord can under this section request daily compensation in accordance with s. 86 of the Act which states:

86 A landlord is entitled to compensation for the use and occupation of a rental unit by a tenant who does not vacate the unit after his or her tenancy is terminated by order, notice or agreement.

17. I reference SWL-41142-20 where the Member in that matter analyzed the adjudicative positions of the Board and determined at paragraph 17 that, “*Interpreting the Act to recognize the right of a landlord to actually apply for this compensation for an overholding former superintendent would in essence permit the tenant to reside for free and does not provide for adjudication of this dispute*”.
18. The Tenant was required to pay the Landlord \$5,622.48 in daily compensation for use and occupation of the rental unit for the period from September 27, 2022 to January 18, 2023.
19. Based on the Monthly rent, the daily compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.

It is ordered that:

20. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2023.
21. If the unit is not vacated on or before February 28, 2023, then starting March 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
22. 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 1, 2023.
23. The Tenant shall pay to the Landlord \$5,622.48 in daily compensation for use and occupation of the rental unit for the period from September 27, 2022 to January 18, 2023.

24. The Tenant shall also pay the Landlord compensation of \$49.32 per day for the use of the unit starting January 19, 2023 until the date the Tenant moves out of the unit.

February 8, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on September 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.