



Order under Section 94  
Residential Tenancies Act, 2006

Citation: Heritage Community Housing Corporation v Taylor, 2023 ONLTB 17854

Date: 2023-02-01

File Number: LTB-L-015605-22

In the matter of: 308, 250 HICKORY ST S  
WHITBY ON L1N9G8

Between: Heritage Community Housing Corporation

Landlord

And

Patrick Taylor

Tenant

Heritage Community Housing Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Patrick Taylor (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 25, 2023.

Only the Landlord's Legal Representative, Howard Levenson and the Landlord's Property Manager, Angela Trudell attended the hearing.

As of 9:47 am, 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. 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.
2. The Tenant was employed as a superintendent and, as part of his employment, was provided with accommodation in a 3-bedroom rental unit specifically used for superintendents.
3. The Tenant was in possession of the rental unit on the date the application was filed.

4. The Tenant vacated the rental unit on May 31, 2022.
5. The employment between the Landlord and Tenant commenced on October 15, 2020.
6. The Landlord terminated the employment of the Tenant on February 28, 2022.
7. The Landlord provided a copy of an employment contract signed by the Landlord and the Tenant on October 15, 2020. Section 13.9 of the contract states the following:
  - a) Employees must vacate their accommodations within 30 days of their termination or resignation.
8. The Tenant did not vacate the superintendent's premises within thirty days of the employment ending, being March 30, 2022.
9. 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 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).
10. Pursuant to Section 93(1) of the Act, based on the uncontested evidence of the Landlord's Property Manager and a letter of termination dated January 27, 2022 from the Landlord to the Tenant, that notes a termination date of February 28, 2022. I find the tenancy terminated on February 28, 2022.

#### Adjudicative Approaches to Compensation in the case of Overholding Superintendents

11. The Landlord's Legal Representative requests compensation in the amount of \$3,159.00 which represents a monthly rent of \$1253.00 for period of March 1, 2022 to May 30, 2022, less a \$600.00 payment the Tenant made the Landlord on March 18, 2022.
12. When considering the Landlord's request for daily compensation, in addition to Section 93 of the Act, the following sections are relevant:
  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.

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.

87(3). If a tenant is in possession of a rental unit after the tenancy has been terminated, the landlord may apply to the Board for an order for the payment of compensation for the use and occupation of a rental unit after a notice of termination or an agreement to terminate the tenancy has taken effect.

13. The Board's jurisprudence on the issue of whether the Board has jurisdiction to award a landlord compensation where a former superintendent does not vacate the rental unit within seven days of their employment being terminated are two different approaches respecting the interpretation of the interaction between sections 93, 94, 86 and 87 of the Act.
14. One approach relies on an interpretation of the termination of the tenancy by operation of law and was aptly described in Order SOL-71793-20 (August 18, 2016).
  6. Section 86 states that a landlord is entitled to compensation for use and occupation after termination of a tenancy by order, notice or agreement. Subsection 87 (3) allows a landlord to apply for compensation for use and occupation of rental unit after a notice of termination or an agreement to terminate the tenancy has taken effect.
15. However, a superintendent's tenancy is terminated by operation of law, not by notice or agreement.
16. While the Landlords have applied under Section 94 of the Act for an order terminating the tenancy, the Landlord's claim to compensation under section 86 arguably arises where the Landlord has made a claim under subsection 87 (3) of the Act. Subsection 87 (3) does not apply to a superintendent's tenancy, as former superintendent's tenancy is not terminated by notice or agreement- it is terminated by operation of law once the employment is terminated. It is clear from a contextual reading of section 86 that compensation is only available where a tenancy is terminated by notice, agreement or by a Board order confirming termination of the tenancy by notice or agreement.
17. I conclude that there is no statutory basis to order compensation from an overholding tenant after termination of a superintendent's tenancy.
18. As a result, under this approach no relief for daily compensation is available to the Landlord as the tenancy did not terminate by way of agreement or notice but rather by operation of law and there is no statutory authority under which to award daily compensation for a tenancy that terminates by operation of law.
18. The Board reached the same conclusion in *Country Club Towers v. Khachatryan*, [2001] O.R.H.T.D No. 75 and Re File No. TSL-02245-09-RV (September 15, 2010), Rozehnal.
19. The fact that the parties entered into an agreement for the Tenants' obligation to vacate the unit if the employment is terminated does not, in my view, mean that the tenancy terminated by agreement.

20. An alternative approach, as described below, looks to interpret the above provisions in a broader context.
21. Once a superintendent is no longer employed, the employment relationship is at an end and what remains is the landlord and tenant relationship. Section 94 provides that the landlord may apply for an order to terminate the tenancy of a tenant of superintendent's premises and evict the tenant if the now former superintendent does not leave within one week of the termination of their employment. The termination of the tenancy and an order evicting the former superintendent are two separate forms of relief.
22. There is no discretion provided under the Act with respect to the date the tenancy terminates – s. 93(1) provides the date of termination is the date the employment ends. However, section 94 provides that the Landlord may obtain an order terminating the tenancy. Section 86 would then apply to the termination because the Board has issued an order terminating the tenancy. As a result, under this interpretation the landlord is entitled to compensation for the time the unit is occupied by the Tenant after the tenancy is terminated.
23. At this point it is important to recall the purposes of the Act. Section 1 of the Act provides:

S. 1(1) The purposes of this Act are to provide protection for residential tenants from unlawful rent increases and unlawful evictions, to establish a framework for the regulation of residential rents, to balance the rights and responsibilities of residential landlords and tenants and to provide for the adjudication of disputes and for other processes to informally resolve disputes. [Emphasis added]

24. Interpreting the Act to recognize the right of a landlord to daily compensation but not permitting a landlord to actually apply for this compensation for an overholding former superintendent would in essence permit the tenant to reside for free. I do not believe this is a reasonable interpretation.
25. The Board is mandated to consider all circumstances before granting an order for eviction. Where a Landlord applies under section 94 for an order evicting an overholding former superintendent, refusal or postponement of the eviction can be ordered. Without a basis to apply for daily compensation, the Landlord may be left without any compensation for the occupation of the rental unit.
26. As a result, I adopt the second adjudicative approach and find there is authority to award daily compensation in the case of overholding former superintendents.

What is the Appropriate Daily Compensation?

27. Having held that there is a basis under which to award daily compensation, the question then becomes, “What is the appropriate rate for daily compensation to be awarded in the circumstances of this case?”

28. The Landlord requested daily compensation based upon a comparable market rate for the rental unit. The Landlord's Property Manager, Angela Trudell testified the current market rent for a three-bedroom rental unit in the residential complex is \$1253.00 per month. The Landlord is seeking compensation for March, 2022, April 2022 and May 2022 in the amount of \$1253.00, less \$600.00 the Tenant paid the Landlord on March 18, 2022. The total amount the Landlord is requesting is \$3,159.00.
29. I am satisfied the \$1253.00 represents a reasonable monthly rate for a three-bedroom unit and I find the lawful monthly rent to be \$1253.00.
30. There is no last month rent deposit.
31. The Tenants stayed in the unit for 92 days after their employment and tenancy Terminated for the period of March 1, 2022 to May 31, 2022. Seven of these days are not compensable under s. 93(2) of the Act. The Landlord is entitled to an order for the remaining 85 days at the rate of \$41.52 a day ( $\$1263 \times 12/365$ ) for a total of \$3,529.20 less the \$600.00 payment the Tenant made to the Landlord on March 18, 2022. The total amount the Tenant owes the Landlord is \$2,929.20.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of February 28, 2022, the date the Landlord terminated the Tenant's employment as a superintendent.
2. The Tenants shall pay to the Landlord \$2,929.20, which represents the total amount of daily compensation, less the \$600.00 payment the Tenant made the Landlord on March 18, 2022, for the use of the unit starting March 8, 2022, one week following termination of the employment and tenancy on February 28, 2022 to May 31, 2022, the date the Tenant moved out of the rental unit.
3. The Tenants shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before February 22, 2023, they will start to owe interest. This will be simple interest calculated from February 23, 2023 at 5.00% annually on the balance outstanding.

February 1, 2023

Date Issued

Trish Carson

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.