



Order under Subsection 87(1) Residential Tenancies Act, 2006

Citation: Rastegar v Solaris Roofing Inc, 2023 ONLTB 14016

Date: 2023-01-10

File Number: LTB-L-068678-22

In the matter of: 29 Plank Road
Holland Landing ON L9N1B4

Between: Faranak Rastegar Landlord

And

Tamara Levine Tenant/Occupant

And

Adriel Levine, Jessica Olmstead, Solaris Roofing Inc. Respondents

Faranak Rastegar (the 'Landlord') applied for an order requiring Tamara Levine, Tradco Manufacturing Ltd., Adriel Levine, Jessica Olmstead, and Solaris Roofing Inc. (the "Tenants"), to pay the rent that the Tenants owe.

This application was heard by videoconference on December 8, 2022.

The Landlord and the Landlord's Legal Representative Ali Golabgir attended the hearing. The respondents Adriel (a.k.a. "Solomon") Levine and Jessica Olmstead and their Legal Representative Bitu di Lisi also attended the hearing.

As of 9:35 a.m., Tamara Levine was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

Determinations:

1. This application is for non-payment of rent. It raises the issue of the identity of the proper Tenant(s) of this rental unit and of the person(s) responsible for payment of arrears of rent.
2. Based on the evidence before me, and as explained below, I find that T.L. was the sole Tenant in possession of the rental unit during the period of the rent arrears claimed in the application, and that T.L. is responsible for the rent arrears.
3. The Landlord entered into a written, one year fixed-term lease agreement with S.A.L., J.O. and Solaris on August 3, 2020. The rental unit is a house. S.A.L. and J.O. paid \$2,500.00 to the Landlord for a last month's rent deposit.



4. At the time, S.A.L. and J.O. were in a relationship as a couple. S.A.L. is the owner of the respondent companies Solaris and Tradco. There is no dispute that the unit was intended to be occupied for personal, residential use only. S.A.L. and T.L. were former spouses.
5. S.A.L. and J.O. resided in the unit for one month from August 4, 2020 to September 4, 2020. Immediately after they vacated, they handed over possession of the unit to T.L. who then occupied the house for approximately the next 10 months.
6. The Landlord submits that the respondents are equally liable for rent arrears. She does not believe that S.A.L. and J.O. terminated the tenancy. S.A.L. contributed to rent payments and communicated with her throughout, including by group messaging with T.L.. She testified that she saw S.A.L. moving out of the unit in July 2021.
7. S.A.L. submits that only T.L. is liable for rent arrears. That is because he and J.O. permanently vacated the unit with the understanding that T.L. would be the new Tenant. He testified that he was merely helping T.L. move items out of the unit in July 2021.

The Nature of T.L.'s Occupancy

8. Subsection 202(1) of the *Residential Tenancies Act, 2006* (the 'Act') directs the Board to look at the real substance of transactions between parties. It requires consideration of the intentions of those involved and the contextual circumstances.
9. It is unclear when the Landlord became aware of T.L.'s occupancy because the notice was given verbally and the participants' recall was imperfect. However, it seems that the Landlord became aware of the transfer of occupancy sometime between September 4, 2020 and September 24, 2020.
10. The Landlord accepted the arrangement. She later received a copy from T.L. of a mediated separation agreement in which T.L. and S.A.L. would exchange housing (which I infer was the reason T.L. moved in) and S.A.L. would pay the rents for 12 months.
11. She recalls S.A.L. telling her that he and J.L might reconcile. From this, she understood that S.A.L. and T.L. were living apart and that T.L. was effectively occupying the unit as a S.A.L.'s spouse. On that basis, she concluded that the original lease agreement remained in force. Neither did she return the unused last month's rent deposit to S.A.L. and J.O..
12. S.A.L., to the contrary, insists that he informed the Landlord in September 2020 that he and J.O. were no longer the Tenants and that he and T.L. fully expected the Landlord to sign a new lease with T.L.. He reiterated this to the Landlord in several text messages.
13. The Landlord, he states, did not object to their verbal notice of termination. He testified that the mediated agreement referenced was never signed because T.L. walked away from the mediation. He submits that the Landlord's acceptance of T.L.'s occupancy for 10 months meant that there was an implied tenancy agreement between them.
14. There is no dispute that S.A.L. helped, or offered to help, T.L. to make rent payments in 2020. He also arranged with the Landlord to address some maintenance issues at the unit. He emailed and texted the Landlord often until at least February 2021. When T.L.'s conduct became difficult, he expressed disappointment about T.L. to the Landlord.



15. The Landlord is adamant that she never entered into a tenancy agreement with T.L.. She resisted being pressured in that regard. She did not feel it necessary based on her belief that S.A.L. remained a Tenant.
16. S.A.L.'s conduct, in particular, may be judged unsound. He ought to have provided proper notice of termination and sought an assignment of the tenancy. He did not ask to recover the rent deposit. He was not transparent with the Landlord about the situation. Indeed, his efforts to micromanage T.L.'s occupancy only muddled the situation.

Transfers of Occupancy and the Act

17. At the hearing, the Landlord, S.A.L. and J.O. referred to T.L. as an "authorized occupant". Under the Act, this generally refers to a person who has been invited to reside with the tenant in the unit. Their occupancy is not dependent upon the landlord's approval. That is because a tenant is not prohibited from having other people living there.
18. A person who becomes an occupant by way of transfer by a vacating tenant does not automatically become the new tenant. If the person occupies the unit without the landlord's consent by lease, sublease, or assignment, the person is an unauthorized occupant.
19. Subsection 2(1) of the Act defines a tenant as a person who pays rent for the right to occupy the unit. Section 13(2) of the Act provides that a tenancy agreement takes effect when the tenant is entitled by right to occupy the unit. A landlord is free to decide whether to contract with a person for the right to occupy their unit (as long as such decision is not discriminatory under the Ontario *Human Rights Code*).
20. The Act does permit occupancy transfers as long as the transfer is done in a way that is authorized by the legislation. Where that happens, the occupant becomes the tenant.
21. There are three acceptable methods of transferring occupancy: (1) assigning the unit and tenancy to a person, pursuant to subsection 95(1) of the Act; and (2) subletting the unit, pursuant to subsection 97(1) of the Act. Each of these have specific criteria that must be met. The third involves the landlord and the occupant entering into a tenancy agreement.
22. In a sublease, the tenancy is not terminated and the tenant remains as the 'head tenant'. If an assignment, the original tenancy is terminated and the occupant becomes the new tenant who, generally, is bound by the original terms of the lease unless the landlord and the new tenant agree otherwise in writing.
23. A tenancy agreement may be oral or written. Under contract law, there must be a clear, unequivocal offer and acceptance of the offer with an expiry date. An implied tenancy may form, however, when the parties treat each other as landlord and tenant over the course of time even if they never formalized the tenancy relationship or explicitly agreed to the terms of the tenancy. Despite the remedial nature of the Act, implied tenancies have some restrictions.
24. Subsection 103(2) of the Act provides that a tenancy is not created by conduct or implication if a landlord merely accepts rent payments from an unauthorized occupant or third party. Equally, the fact that a former tenant communicates with the landlord does not, by itself, prove that the former tenancy continues as if it was never terminated.



25. There is no dispute that S.A.L. and J.O. did not ask for the Landlord's consent to assign the tenancy, or to sublet the unit, to T.L.. The transfer of T.L.'s occupancy thus occurred in a manner not authorized by the Act.

Remedies for Unauthorized Occupancies

26. An occupancy may become authorized under the Act if the Landlord acts or, alternatively, omits to act. Subsection 104(4) of the Act sets out those circumstances.
27. If the Landlord objected to T.L.'s unauthorized occupancy then, pursuant to section 100 of the Act, she had the option of applying to the Board within 60 days of discovering the occupancy for an order terminating the tenancy, for eviction and for compensation for the use/ occupation of the unit.
28. Or, if the Landlord entered into a tenancy agreement with T.L. within 60 days of discovering T.L.'s occupancy, T.L. would become the new tenant. But if the Landlord either omitted to enter into a tenancy agreement with T.L. or apply to the Board to evict her within those 60 days, then pursuant to subsection 104(4) of the Act, T.L.'s occupancy and tenancy would be deemed to be an assignment with the consent of the Landlord.
29. The Landlord had until November 24, 2020 to do either. In other words, if it could be established that the Landlord had entered into an oral, written or implied tenancy agreement with T.L. before November 24, 2020, then T.L. would be the Tenant and not an unauthorized occupant.
30. The following facts: that the Landlord knew that T.L. was living in the unit; T.L. made, and the Landlord accepted, rent payments; they discussed tenancy issues; and the Landlord asserted her rights during the occupancy; do not confer tenant status upon T.L.. None of that is a conclusive basis for finding there was an implied tenancy¹.
31. T.L. is in the best position to give evidence about the existence of an oral or implied tenancy agreement but she was not present at the hearing. The Landlord's uncontested evidence is that she did not enter into any kind of tenancy agreement with T.L. at any time.
32. It is the passage of time which dictates the outcome. Since 60 days have ensued since T.L. moved into the unit without the Landlord taking any positive action, the outcome is therefore dictated by subsection 104(4) of the Act.
33. I find that the Landlord is deemed to have given her consent to the assignment of the unit and tenancy as of September 4, 2020, and that T.L. was the assignee Tenant from September 4, 2021 to July 15, 2021.

Liability for the Arrears of Rent Claimed

34. I appreciate that the Landlord believes it is financially beneficial for her to hold the original tenants responsible for the arrears. S.A.L. acted like a guarantor for the first few months of T.L.'s occupancy. He was willing and able to provide financial support to T.L.. The Landlord views the prospect of recovering arrears from T.L. as uncertain. S.A.L.'s continued involvement seemed to be an insurance against the debt.

¹ See TSL-13388-20 (Member A. Brkic)



35. Even if I had found S.A.L. and J.O. to be lawful Tenants, the Landlord's right to apply to the Board was restricted by subsection 87(1)(b)² to situations where the Tenants are in possession of the rental unit at the time the application was filed. If they were not in possession, the Board has no authority to order them to pay the rent arrears. Based on the evidence before me, I am satisfied, on the balance of probabilities, that S.A.L. and J.O. were not in possession of the unit on March 9, 2021, the date the application was filed.
36. I find that T.L. was the Tenant in possession on March 9, 2021, with sufficient connection to the unit at that time. There is no evidence that she was not living there daily. The evidence is that she had the keys and unimpeded access to the unit; she accepted she had to pay for rent and utilities, and she carried on her usual living activities there.
37. Based on the above, I find that T.L. is the proper Tenant for the purposes of the application.

The Merits of the Rent Arrears Application

38. The N4 Notice of Termination identifies T.L. as the correct Tenant.
39. On the date the application was filed, the Tenant was in possession of the rental unit.
40. T.L. failed to pay the total rent they were required to pay between February 1, 2021 and July 1, 2021.
41. The lawful rent is \$2,500.00. The Tenant has not made any payments since the application was filed.
42. The tenancy ended on July 15, 2021 as a result of the Tenant moving out in accordance with a notice of termination, LTB order or agreement to terminate the tenancy. Therefore, the Tenant's obligation to pay rent also ended on that date.
43. The rent arrears and daily compensation owing to July 15, 2021 are \$13,732.85.
44. The Landlord collected a rent deposit of \$2,500.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit is applied to the arrears of rent because the tenancy is terminated. Interest on the rent deposit, in the amount of \$29.00 is owing to the Tenant for the period to July 15, 2021.
45. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

It is ordered that:

1. The Tenant shall pay to the Landlord \$11,389.85. This amount includes rent arrears owing up to July 15, 2022 and the cost of the application minus the rent deposit and interest owing.

² As it was in force on March 9, 2021. On September 21, 2021, section 87 of the Act was amended to provide that applications for arrears of rent may be made while the tenant is in possession of the unit, or no later than one year after the tenant or former tenant ceased to be in possession of the unit.



2. If the Tenant does not pay the Landlord the full amount owing on or before January 21, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 22, 2023 at 5.00% annually on the balance outstanding.

January 10, 2023

Date Issued

Elle Venhola

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.