



**Order under Section 69 / 94
Residential Tenancies Act, 2006**

Citation: Drewlo Holdings Inc v Ebeling, 2023 ONLTB 13793

Date: 2023-01-09

File Number: LTB-L-072042-22
(HOL-10389-21)

In the matter of: 107, 101 Fallowfield Drive,
Kitchener ON N2C0B4

Between: Drewlo Holdings Inc Landlord

And

Deborah Ebeling Tenants
Walter Ebeling

2023 ONLTB 13793 (CanLII)

Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-072042-22.

Drewlo Holdings Inc (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Ebeling and Walter Ebeling (the 'Tenants') of a superintendent’s premises, because the Tenants’ employment as superintendents ended. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on December 19, 2022. Only the Landlord’s legal representative, Candace Aboussafy, and the Landlord’s property manager, Gabriel Gaudio, attended the hearing. As of 2:01pm the Tenants were not present or represented although properly served with notice of the hearing by the Board. 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. The Tenants were in possession of the rental unit when the application was filed. The Tenants’ vacated the rental unit on April 30, 2021.
2. The tenancy is terminated on April 30, 2021. The date the Tenants gave vacant possession of the rental unit to the Landlord.
3. The Landlord terminated the employment of the Tenants on January 25, 2021.
4. Section 93 and 94 of the Residential Tenancies Act, 2006 (the ‘Act’) provides 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.

5. Section 93(2) of the Act makes it clear that superintendents must vacate the unit within one week after employment ends. When a tenant does not vacate a superintendent unit pursuant to the Act, a landlord is entitled to file an application under section 94 of the Act for termination of the tenancy.
6. While section 93(3) of the Act states that the landlord cannot charge a tenant any rent for the first seven days after the termination of their employment, there is no mention in this section of whether the landlord is entitled to compensation from the tenant if the tenant remains in the rental unit after the seven-day period has expired.
7. Section 86 of the Act entitles a landlord to compensation for use and occupation of a rental unit by a tenant after the tenancy has terminated as a result of notice, agreement of Board order. Moreover, s. 87(3) allows a landlord to apply to the Board for an order requiring an overholding tenant to pay compensation.
8. In my view, and consistent with other decisions from the Board, it is unlikely that the Legislature intended to confer a right to compensation upon a landlord under s. 93 without allowing that landlord to pursue a remedy before the Board. In my view, it is likely that a superintendent unit's tenancy terminates upon termination of the employment relationship. Thus, when the superintendent is given notice that their employment is terminated, this constitutes notice that the tenancy is termination as well. Accordingly, I find I have jurisdiction to award compensation to the Landlord for the use of the unit by the Tenants.
9. In this case, the Tenants' seven day rent free period ran from January 25, 2021 to February 1, 2021. The Tenants did not vacate the unit until April 30, 2021. Consequently, the Tenants owe the Landlord compensation for the use of the unit from February 2, 2021 to April 30, 2021.
10. It is the Landlords position that the daily compensation should be based on the current market rent when the employment was terminated. The Landlord established that the market rent for the unit in which the Tenants resided, which is made up of 2 bedrooms, 2 bathrooms and a den, to be \$2,171.00. This coincides with other units of similar structure in the area which the property is located and was the market rent for the unit as of July of 2021.

11. It was the Landlords evidence that the Tenants were originally hired as superintendents for another property of the Landlords at 425 Wilson Avenue in Kitchener starting March 26, 2012. In the employment contract between the parties the monthly rent for that unit was \$550.00 per month, which was listed as the market rent for that unit at the time the employment began. Some time thereafter, the Tenants requested to be transferred to the smaller building at 101 Fallowfield Drive in Kitchener. There was no new contract entered into between the parties.
12. Based on the undisputed evidence of the Landlord, I find that the rate for compensation should be based on the current market rent of \$2,171.00. This is in line with the original employment contract that the monthly rent was based on the market rent at the time.
13. Based on a monthly rent of \$2,171.00 I find the daily compensation to be \$71.38. The Tenants overheld for a period of 88 days. Accordingly, I find that the Tenants owe to the Landlord \$6,281.44 in daily compensation.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on April 30, 2021. The date the Tenants gave vacant possession of the unit to the Landlord.
2. The Tenants shall pay to the Landlord \$6,281.44 for daily compensation for the use of the unit from February 2, 2021 to April 30, 2021.
3. The Tenants shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. The total amount the Tenants owe the Landlord is \$6,467.44.
5. If the Tenants do not pay the Landlord the full amount owing on or before January 20, 2023, the Tenants will start to owe interest. This will be simple interest calculated from January 21, 2023 at 5.00% annually on the balance outstanding.

January 9, 2023
Date Issued

 Terri van Huisstede
 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.