



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

File Number: LTB-L-072231-25

In the matter of: 2 & 3, 654 SPADINA AVE
TORONTO ON M5S2H7

Between: ESBIN PROPERTY MANAGEMENT INC

Landlord

And

ANTON VERETEN
SEBASTIAN NIETO
KEVIN MEIXNER

Tenant

ESBIN PROPERTY MANAGEMENT INC (the 'Landlord') applied for an order to terminate the tenancy and evict ANTON VERETEN, SEBASTIAN NIETO and KEVIN MEIXNER (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes.

This application was heard by videoconference on November 18, 2025.

The Landlord's legal representative Eric Steiman, and two Landlord agents, Sam Liu, Clair Lydon and Mercury Ma attended the hearing.

All three of the Tenants attended the hearing.

Preliminary:

Tenants claim separate tenancies (tenancy in common)

Tenant submissions

1. The Tenant Kevin Meixner (KM) stated that he and the other tenants have separate tenancy agreements with the seller Landlord.
2. KM stated the seller Landlord sold the residential complex to the current Landlord (Landlord) in October 2023 and the Landlord served an N4 notice and filed an L1 application based on the assumption of a joint tenancy.
3. KM stated the rental unit is second and third floor, three-bedroom unit above a restaurant on the main street.

4. KM stated he and the other Tenant's had separate oral tenancy agreements with the seller Landlord to each rent separate rooms in the residential complex and to pay the Landlord individual rent. KM stated that all three Tenants had moved into the rental unit at separate times.
5. KM stated that he moved into the rental unit in October 2016 and had an oral tenancy agreement with the seller Landlord to pay \$800.00 per month for rent. Since taking possession of the rental unit, KM stated that over the course of his tenancy sometimes there were two other tenants, sometimes one and sometimes he was the only Tenant occupying the rental unit.
6. The Tenant Sebastian Nieto stated he moved in on April 1, 2022 with an oral tenancy agreement with the seller Landlord to pay \$850.00 per month.
7. The Tenant Anton Vereten stated he moved into the residential complex on December 1, 2022 with an oral tenancy agreement to pay \$800.00 per month.
8. Anton's also stated he no longer lives in the rental unit and stated he vacated the rental unit January 31, 2025 and the Landlord is attempting to collect rent for months he was not in possession.
9. KM stated he had evidence to support his claim with emails from the seller Landlord and requested to submit the emails as evidence to support his claims.
10. KM stated the Landlord has submitted an L1 application based on the assumption of a joint tenancy and the application should be dismissed.

Landlord submissions

11. The Landlord's legal representative stated he had not received an evidence package from the Tenants seller to the hearing in accordance with the Board Rules.
12. The Landlord's legal representative's position is the application is properly before the Board and the three Tenants have not raised this issue of separate tenancies with the Landlord seller to the hearing.
13. The Landlord's legal representative stated that should the application be dismissed it would be highly prejudicial to the Landlord given the quantum of the arrears.
14. The Landlord agent Clair Lydon stated that she is employed by the property management company hired by the Landlord in June 2025.
15. The Landlord agent, Mercury Ma is employed by the Landlord as the property manager in charge of finances. He provided testimony as to the particulars of the sale of the residential complex. Mercury testified that the seller Landlord's lawyer provided details on the Tenants that the new Landlord was acquiring.
16. At 2:17.07 of the recording Mercury states:

*“The seller’s lawyer only told us that there were verbal **leases** with tenants, and there were three tenants in there...”*

“The matter is not whether it is joined or separate leases its that none of them have been paying us.”

[emphasis added]

Analysis

17. Findings of Board

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants.

18. Section 17(1) of the SPPA that states:

Decision; interest

Decision

17 (1) A tribunal shall give its **final decision and order, if any, in any proceeding in writing** and shall give reasons in writing therefor if requested by a party.

[Emphasis added.]

19. Although at the hearing I indicated that I would adjourn the hearing to allow the parties to exchange evidence and provide evidence to the Board, after further reflection and consideration of the submissions at the hearing I find that an adjournment is not required.

20. The onus is on the landlord to prove the allegations in the application and show that the tenant(s) owes arrears of rent.

21. Legally speaking, an allegation of arrears is an allegation of breach of the lease(s) that the tenant(s) have failed to pay the lawful rent in full.

22. Although it is difficult to prove a negative (i.e. non-payment of rent) the burden of proof for the existence of grounds for eviction based on the service of an N4 notice for arrears of rent lies strictly on a landlord to provide proof for the exact amount of arrears the Tenant owes.

23. In *Audain v Sisters of St. Joseph for the Diocese of Toronto* in Upper Canada, 2010 ONSC 719, the Divisional Court held that the landlord bears the burden of proving arrears as follows:

1. This is an application by the landlord to terminate a tenancy based on a failure to pay rent as required. The onus is on the landlord to prove those arrears...

24. The Landlord's failure to do so means the Board may not issue an order under section 74(3) that states:

(3) An order of the Board terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 59 shall,

a. specify the following amounts:

i. **the amount of rent that is in arrears under the tenancy agreement,**

[emphasis added]

25. The question of the type of tenancy is the issue to be determined by the Board, whether there is a joint tenancy between the Tenants or a tenancy in common with three separate lawful rents and tenancy agreements.

26. In a tenancy in common, each tenant holds a separate and distinct share of the tenancy. The tenants do not hold separate physical areas of the property; rather, each of them holds a percentage share of the whole property.

27. This is consistent with the testimony provided by all three Tenants that they rent rooms in the residential complex but share common facilities.

28. Further, in the context of the RTA, another important feature of a tenancy in common is that the tenants pay separate rents and are liable only for their own rent amounts in accordance with their own tenancy agreements. For example, rather than a joint rent of \$2,400.00 three tenants in common may have rents of \$900.00, \$800.00 and \$700.00, or all three tenants may in fact have separate rents in an equal amount of \$800.00 each, as appears to be the case here. This is consistent with each tenant holding a defined percentage of the tenancy with separate lawful rents.

29. I find all three Tenants credible, consistent and unwavering in their testimony and specific details regarding the oral tenancy agreement with the seller Landlord that they have separate tenancy agreements and obligations of rent.

30. KM has been occupying the rental unit since October 1, 2016 and I find his testimony credible with respect to him being the sole constant tenant. This also suggests that the KM and the Landlord had a separate tenancy agreement as other tenants have come and gone and the Landlord accepted new tenants to occupy the vacant rooms and rented the rooms with separate rent.

31. I also considered the testimony provided by Mercury regarding the seller Landlord's lawyer informing the Landlord that he is acquiring three Tenants with "verbal leases" and in my

view the Landlord or the Landlord agents had an obligation to perform due diligence on the status and type of Tenants the Landlord acquired.

32. Mercury testified that he did not understand the difference between joint tenancies and tenancies in common and during submissions suggested it didn't matter because the Tenants owed rent.
33. This in fact is an important issue to determine before the Landlord can serve a valid N4 notice and in my view the Landlord or Landlord agent has failed to perform due diligence after receiving the information on the separate leases from the seller Landlord's lawyer.
34. In my view what has happened here is the Landlord has purchased the residential complex with sitting Tenants. The Landlord and / or Landlord agent was informed that these Tenants have three separate oral tenancy agreements in place each with separate rents and the Landlord has not performed due diligence to follow up on the information received.
35. With the totality of the evidence and submissions before me and on a balance of probabilities I find the tenancy that exists between the Tenants and the Landlord is one of a tenancy in common. The Landlord has served an invalid N4 notice to the Tenants, and filed an application with the Board as a joint tenancy which is not the case here.
36. I find the Landlord has not proven the arrears owed under the three separate tenancy agreements of the three tenants.
37. Therefore, the Landlord's application must be dismissed.
38. Although this order does not specifically address each piece of evidence individually or reference all the testimony, I have considered all of the evidence presented at the hearing and all of the oral testimony when making my determinations.
39. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.

January 5, 2026
Date Issued

Greg Brocanier
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.