



Order under Section 135 Residential Tenancies Act, 2006

Citation: Benjamin Atienza v Maher Salem, 2025 ONLTB 26516

Date: 2025-04-08

File Number: LTB-L-063834-25

In the matter of: 702, 123 CHARLTON AVE E
HAMILTON ON L8N3W3

Between: Benjamin Atienza Tenant
Giuliana Marrelli
David Nguyen

And

Maher Salem Landlord
Drake Property Management

When the capitalized word “Landlord” is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word “Tenant” is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Benjamin Atienza, Giuliana Marrelli and David Nguyen (the 'Tenant') applied for an order determining that Maher Salem and Drake Property Management (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on January 8, 2026.

Only the Tenants attended the hearing.

As of 10:55 a.m., the Landlord 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 Tenants' evidence.

Determinations:

Preliminary Issues:

LTB jurisdiction

1. At the hearing, Benjamin Atienza (BA), testifying on behalf of the tenants submitted that they responded to a rental ad posted on Kijji by Maher Salem (MS) on or about March 15,

2025. That they provided (MS) a \$500.00 deposit towards the rental of the unit as subject of this application and entered into a one-year lease commencing April 1, 2025. That on March 30, 2025, they provided (MS) an additional amount of \$3,500.00, the total of \$4,000.00 representing the first and last months rent deposit as the monthly rent agreed upon was \$2,000.00.

2. Further, that it was their understanding the (MS) was the Landlord of the rental unit and represented Drake Property Management.
3. On or about May 14, 2025, the Tenants found themselves locked out of the rental unit by the Landlord "Drake Property Management" in an enforcement proceeding as against the head tenant Maher Salem pursuant to the Landlord's L1 application filing in LTB-L-099773-24 that terminated his tenancy on April 19, 2025.
4. It was at that time that the Landlord Drake Property Management became aware that (MS) entered into an unlawful sublet with the Tenants.
5. There is no dispute that Landlord Drake Property Management did not consent to a sublet, the Tenants submitted that management was sympathetic to their situation and attempted to rent them another rental unit in the complex although the application was ultimately not approved.

Analysis

6. Regarding subletting, 97 (1) of the *Residential Tenancies Act, 2006* (the 'Act') outlines that **a tenant may sublet a rental unit to another person with the consent of the landlord.**
7. Subsection 97(4) of the *Residential Tenancies Act, 2006* (the 'Act') describes the consequences of subletting as:

If a tenant has sublet a rental unit to another person,

(a) the tenant remains entitled to the benefits, and is liable to the landlord for the breaches, of the tenant's obligations under the tenancy agreement or this Act during the subtenancy; and

(b) the subtenant is entitled to the benefits, and is liable to the tenant for the breaches, of the subtenant's obligations under the subletting agreement or this Act during the subtenancy.

8. Further, s.135(1) provides that a tenant or former tenant may apply to the Board for an order where the Landlord and/or superintendent has collected or retained money in contravention of the Act.

9. Section 135(3) states that:

(3) A subtenant may apply to the Board for an order under subsection (1) as if the subtenant were the tenant and the tenant were the landlord.

10. In the case before me, there is no dispute that the rental arrangement as entered into between (MS) and the Tenants was not a lawful subtenancy pursuant to s. 97 of the Act.
11. Based on the uncontested evidence before me, the lawful Landlord is Drake Property Management, they commenced sheriff enforcement proceeding as against (MS), they were unaware that anyone else was residing in the rental unit at the time that eviction was enforced on May 14, 2025. The Notice of Vacant Possession dated May 14, 2025 is evidenced on page of 18 of DOC-6118530 of the Tenants' evidence package.
12. Further, I also find that as there is no existence of a valid subtenancy agreement as entered into between (MS) and the Tenants, the LTB does not have jurisdiction to address the matter, this appears to be a case of fraud. I say this as (MS) while being served with a N4 notice for non-payment of rent pursuant the Landlord's L1 application which proceeded to hearing and subsequently terminated the tenancy on April 19, 2025, misrepresented himself to be the Landlord and collected \$4,000.00 from the applicants. The rental agreement as entered into was without the lawful Landlord's Drake Property Management knowledge nor consent.
13. As I have found that the LTB does not have jurisdiction to address the matter, the application must be dismissed.
14. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Tenants' application is dismissed.

January 13, 2026
Date Issued

Alicia Johnson
Member, Landlord and Tenant Board

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