



Order under Section 100 101 Residential Tenancies Act, 2006

Citation: Beaches West Development Ltd v Hamilton, 2026 ONLTB 5049

Date: 2026-01-15

File Number: LTB-L-088737-24

In the matter of: B1, 2519 Lake Shore Blvd West
Etobicoke Ontario M8V1E3

Between: Beaches West Development Ltd Landlord

And

The Estate of Joanne Hamilton Tenant

And

Krystal Hamilton Unauthorized Occupant

Beaches West Development Ltd (the 'Landlord') applied for an order to terminate the tenancy of the Estate Joanne Hamilton (the 'Tenant') and evict Krystal Hamilton (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent. The Landlord also applied for compensation by the Unauthorized Occupant for the use of the rental unit.

This application was heard by videoconference on May 12, 2025.

The Landlord's Agent, Michelle Lees, and the Unauthorized Occupant attended the hearing.

I have considered all of the evidence presented at the hearing and all of the oral testimony, and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

Determinations:

1. As explained below, per section 100(1) of the *Residential Tenancies Act, 2006*, (the 'Act'), the Tenant transferred the occupancy of the rental unit to the Unauthorized Occupant in a manner that was not authorized by the Act. Since the Landlord did not enter into a tenancy agreement with the Unauthorized Occupant, they must vacate the unit on or before February 28, 2026.
2. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed.

3. Joanne Hamilton was the sole Tenant on the lease agreement. The Unauthorized Occupant is the Tenant's daughter.
4. Pursuant to subsection 100(2) of the Act, the application was filed within 60 days after the Landlord discovered the unauthorized occupancy of the rental unit. The Landlord was made aware the Tenant passed away on August 24, 2024 and subsequently filed the application on October 21, 2024, within the 60-day time limit.
5. Though the parties dispute the date the Unauthorized Occupant moved into the unit, they do not dispute that the Unauthorized Occupant moved into the unit to act as a care giver for the Tenant at some point in 2024 before the Tenant passed away.
6. The Unauthorized Occupant testified that upon moving in, the Tenant texted the Landlord asking to make the Unauthorized Occupant a tenant, but did not provide proof of the text at the hearing.
7. The parties do not dispute that after the Tenant passed away, the Landlord gave the Unauthorized Occupant the opportunity to apply to become a tenant, and that the application was ultimately rejected on or before September 26, 2024. The Unauthorized Occupant testified that she offered to find a co-signor for the lease, so she was confused as to why her application was denied. The Landlord's Agent testified that in addition to having been evicted from her previous unit, the Unauthorized Occupant's credit check rated her as an extreme risk, which were the primary reasons the tenancy application was rejected. The Landlord's Agent confirmed there were no further attempts to create a tenancy.
8. Subsection 91(1) of the Act states:
 - (1) If a tenant of a rental unit dies and there are no other tenants of the rental unit, the tenancy shall be deemed to be terminated 30 days after the death of the tenant.
9. Subsection 100(1) of the Act states:
 - (1) If a tenant transfers the occupancy of a rental unit to a person in a manner other than by an assignment authorized under section 95 or a subletting authorized under section 97, the landlord may apply to the Board for an order terminating the tenancy and evicting the tenant and the person to whom occupancy of the rental unit was transferred.
10. Based on the parties' evidence and submissions before me, and in consideration of subsection 100(1) of the Act, I am satisfied, on a balance of probabilities, that the Tenant transferred the occupancy of the rental unit to the Unauthorized Occupant in a manner that was not authorized by the Act. There was no dispute that the Tenant passed away, and the Landlord gave the Unauthorized Occupant an opportunity to apply for a tenancy within 30 days of the Tenant's passing. There was no obligation on the part of the Landlord to automatically accept the Unauthorized Occupant's application, and the Unauthorized Occupant did not dispute the issue of her problematic credit rating and previous eviction. Therefore, I accept the Landlord's Agent's testimony regarding the reasons for why the

tenancy application was rejected. I am also satisfied that the Landlord has not entered into any new tenancy agreement with the Unauthorized Occupant and is therefore entitled to vacant possession of the rental unit.

11. Finally, in accordance with subsection 91(1) of the Act, I find that the tenancy was deemed to have terminated 30 days after the death of the Tenant. As the date of death is established as August 24, 2024, the tenancy was deemed to have ended on September 23, 2024.

Daily Compensation

12. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant.
13. The Unauthorized Occupant owes the Landlord \$7,558.56 in daily compensation for use and occupation of the rental unit for the period from September 23, 2024 to the May 12, 2025.
14. Based on the Monthly rent, the daily compensation is \$32.58. This amount is calculated as follows: $\$990.94 \times 12 \text{ months}$, divided by 365 days.
15. Since the Landlord became aware of the Unauthorized Occupant, the Unauthorized Occupant paid the Landlord \$0.00 in compensation for use of the rental unit.
16. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Considerations

17. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until February 28, 2026, pursuant to subsection 83(1)(b) of the Act.
18. The Unauthorized Occupant is an Indigenous 43-year-old, with two adult children not living in the unit at the time of the hearing.
19. The Unauthorized Occupant testified she has undergone significant personal tragedy and suffers from complex mental health issues. A medical note from the Unauthorized Occupant's physician was submitted at the hearing providing additional details to this regard.
20. The Unauthorized Occupant testified she has no where else to go and will need some time to secure another rental unit.
21. The Landlord's Agent submitted that the Unauthorized Occupant has made no payments towards the arrears and has had over seven months as of the date of the hearing to find alternate accommodation. The Landlord consequently seeks a standard eviction timeline.

22. Having considered the evidence and submissions before me, particularly the Unauthorized Occupant's mental health issues, I find it reasonable in the circumstances to postpone the eviction to allow the Landlord a measure of relief while also providing the Unauthorized Occupant additional time to secure alternate accommodation and any supplemental mental health assistance during this time.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated.
2. The Unauthorized Occupant shall move out of the rental unit on or before February 28, 2026.
3. If the unit is not vacated by February 28, 2026, then starting March 1, 2026, the Landlord may file this order with the Court Enforcement Office (the Sheriff), so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord after March 1, 2026.
5. The Unauthorized Occupant shall pay to the Landlord \$7,558.56 which represents daily compensation for the use of the rental unit from September 23, 2024 to the May 12, 2025.
6. The Unauthorized Occupant shall also pay to the Landlord \$32.58 per day for compensation for the use of the unit from May 13, 2025 to the date they move out of the unit.
7. The Unauthorized Occupant shall also pay the Landlord \$201.00 for the cost of filing the application.
8. The Unauthorized Occupant shall pay the Landlord the full amount owing by February 28, 2026.
9. If the Unauthorized Occupant does not pay the Landlord the full amount owing by February 28, 2026 they will owe interest. This will be simple interest calculated from March 1, 2026 at 4.00% on the outstanding balance.

January 15, 2026
Date Issued

Fotoula Hatzantonis
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on

September 1, 2026 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.