



Order under Section 94 Residential Tenancies Act, 2006

Citation: H & S Investments v Heath, 2026 ONLTB 7534

Date: 2026-01-23

File Number: LTB-L-053490-25

In the matter of: 108, 3310 FIELDGATE DR
MISSISSAUGA ON L4X2J1

Between: H & S Investments

Landlord

And

O'Neil Heath

Tenant

H & S Investments (the 'Landlord') applied for an order to terminate the tenancy and evict O'Neil Heath and Juletta Johnson (the 'Tenants') because:

- the rental unit is the superintendent's premises and the Tenants' employment as superintendents has 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 November 12, 2025.

The Landlord, C. Fidani, the Landlord's property manager, S. Saban, the Tenants, and the Tenants' legal representative, C. Krouchan, attended the hearing.

Preliminary Issue:

Is Juletta Johnson a Party to the Application

1. The parties agree that Juletta Johnson was not an employee of the Landlord and was only added to the application on the basis that she is Mr. Heath's wife.
2. Pursuant to subsection 201(1)(f) of the *Residential Tenancies Act, 2006*, the ("Act"), Juletta Johnson, is removed as a named party to the application.

Determinations:

3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore,

the tenancy shall terminate on or before February 28, 2026. The Tenant must move out of the unit on or before February 28, 2026.

4. The Tenant was in possession of the rental unit on the date the application was filed.
5. The parties disagree about whether the Tenant was ever a superintendent employed by the Landlord and whether the rental unit was rented to the Tenant for the term of the Tenant's employment.
6. The Tenant's representative further argues that the Tenant's duties and responsibilities do not fall under the designation of a superintendent for the purposes of the Act.
7. It was undisputed that the Landlord met the Tenant as a result of his response to a Kijiji ad posted by the Landlord for a superintendent position.
8. Dario Saban (DS), the Landlord's property manager, testified that he is responsible for hiring the Landlord's employees. It was undisputed that DS hired the Tenant. DS testified that he conducted the interview and explained the job duties to the Tenant. DS testified that the Tenant's employment duties included cleaning the common areas, minor repairs, dealing with contractors, garbage disposal and conducting fire inspections. DS further submitted that he showed the mechanical room to the Tenant for which he raised no concerns with. DS further testified that a cleaning log was provided to the Tenant which is subject to By-law inspections. DS testimony was not disputed or challenged by the Tenant.
9. The Landlord, Catherine Fidani, owner of the residential complex, testified that she has owned the residential complex for 55 years. Over that period, all employment contracts have been entered into through an oral agreement and a handshake.
10. It was undisputed that a written employment or rental agreement was never entered into by the parties, however, it was also undisputed that the rental unit was given as a condition of the employment.
11. It was undisputed that the Tenant's employment commenced in or around January 2023. The Tenant moved into unit 108 on January 15, 2023.
12. The Landlord testified that unit 108 was designated as the superintendent's unit since 1968 because it has a fire signal that goes off if something abnormal occurs in the residential complex. The signal alerts the superintendent of any potential emergencies. The Tenant argues that the entire residential complex' fire alarm goes off in the event of an emergency, so the fire signal in unit 108 is irrelevant. Aside from the fire signal, all units within the residential complex are the same.
13. On June 22, 2025, the Tenant was issued a termination notice for cause. The notice of termination was entered into evidence and says in part:

"Please be advised that your employment with H & S Investments/Skylyte Construction is terminated effective immediately with cause. This is a result of your conduct with tenants in the building. An initial warning was issued to you on July 14, 2023 which you obviously disregarded culminating in a legal action taken on April 7th, 2025 by Michael Brennan and Shenice Allicock from Apt. 402 with the Landlord Tenant Board. You have seven days to vacate your premises. Please govern yourself accordingly".

14. The Tenant takes the position that he should not be considered a superintendent because he did not sign an employment contract. The Tenant concedes that he responded to a Kijiji ad for a superintendent position, he signed tax and employment insurance forms and concedes that the rental unit was given to him as a condition of employment. However, the Tenant argues that at no material time, did the Landlord explain that he would be evicted if employment was terminated. The Landlord takes the position that it was not their responsibility to explain the law to the Tenant.
15. In cross-examination, the Tenant acknowledged that he is a superintendent, everyone knows him as such. He accepted the position of superintendent and was getting paid for it, however, when he received the termination of employment letter, he decided to wait for the Board to issue a decision because he never signed an employment contract with the Landlord, therefore, section 93 of the Act does not apply.

Analysis

16. Section 93 of 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.

Same

(2) A tenant shall vacate a superintendent's premises within one week after his or her tenancy is terminated.

No rent charged for week

(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).

17. For the reasons that follow, I find on a balance of probabilities that the Tenant was superintendent of the rental property.
18. The Tenant argues that section 93 of the Act does not apply on the sole basis that he did not sign a written lease or employment agreement with the Landlord.
19. Section 2(1) of the Act states that a "tenancy agreement" may be written, oral or implied. I find it more likely than not that the parties entered into an oral agreement to occupy the rental unit as a condition of employment because it was the Tenant's direct testimony that that he knew the rental unit was provided as a condition of employment. It was also the Tenant's direct testimony that he was in fact the superintendent. He responded to a superintendent's position, he accepted the job, signed employment forms and was known throughout the building as the superintendent.
20. Section 2(1) of the Act also defines "superintendent premises" as a rental unit used by a person employed as a janitor, manager, security guard or superintendent and located in the residential complex with respect to which the person is so employed. At the hearing, the Tenant did not dispute his job description as outlined by DS. On a balance of

probabilities, I find that the Tenant's employment duties fall within the category of janitor or superintendent.

21. For those reasons I find that the Tenant was a superintendent, and that the rental unit was rented to the Tenant for the terms of the Tenant's employment. As the Tenant's employment has been terminated, the Tenant must vacate the rental unit. The Tenant did not submit any evidence or testimony to suggest that there was any alternative agreement entered into between the parties.

Relief from Eviction

22. The Tenant requests that eviction be delayed or denied because he has a vision disability and has lived in the rental unit since January 2023. It was undisputed that the Tenant has been dealing with his disability since 2022, prior to being hired by the Landlord. The Tenant is not aware of how much time he needs to vacate but requests that the Board consider the fact that he lives with his 16-year-old niece and spouse who are currently not working. The Tenant further argues that it's difficult for him to find alternative housing as his disability and termination for cause prevents him from finding affordable accommodations.
23. The Landlord requests immediate termination of the tenancy. The Landlord argues that their current super is currently living somewhere else and does not have access to the fire signal located in the rental unit. This puts the residents of the residential complex at risk.
24. 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. The Tenant's employment ended on June 22, 2025 and the Tenant has already overstayed the termination of his employment by approximately 7 months. I find that it would be unfair to grant additional time past February 28, 2026.

Daily Compensation & NSF

25. The Tenant was required to pay the Landlord \$6,260.08 in daily compensation for use and occupation of the rental unit for the period from June 30, 2025 to November 12, 2025.
26. Based on the monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
28. There is no last month's rent deposit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2026.

2. If the unit is not vacated on or before February 28, 2026, then starting March 1, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after March 1, 2026.
4. The Tenant shall pay to the Landlord \$6,260.08, which represents compensation for the use of the unit from June 30, 2025 to November 12, 2025.
5. The Tenant shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting November 13, 2025 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant must pay the Landlord is \$6,446.08. Any payments made by the Tenant to the Landlord shall be deducted from this amount.
8. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2026 at 4.00% annually on the balance outstanding.

January 23, 2026
Date Issued

Mayra Sawicki
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 of the Tenants 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.