



Order under Section 100 Residential Tenancies Act, 2006

Citation: 869797 Ontario Limited v Irwin, 2026 ONLTB 8506

Date: 2026-01-30

File Number: LTB-L-054349-25

In the matter of: 5-69 Grand Avenue
London, On N6C 1L9

Between: 869797 Ontario Limited Landlord

And

Leslie Irwin Tenant

And

Christopher Unknown Unauthorized Occupant

869797 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy of Leslie Irwin (the 'Tenant') and evict Christopher Unknown (the 'Unauthorized Occupant') because the Tenant transferred occupancy of the rental unit to the Unauthorized Occupant without the Landlord's consent.

This application was heard by videoconference on January 20, 2026.

The Landlord Sally Anastasiadis, the Landlord's Agent, Laura Anthony, and the Tenant, attended the hearing.

As of 2:00 p.m., the Unauthorized Occupant 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 the Landlord's and Tenant's Evidence.

Determinations:

1. The A2 application was filed on June 20, 2025, and claims that the Occupant is an unauthorized occupant in accordance with section 100 of the *Residential Tenancies Act, 2006* (the 'Act'). The Landlord's position is that the Tenant moved out of the rental unit and transferred the occupancy to the Occupant in a manner that was not authorized by the Act, and that Landlord did not enter into a tenancy agreement with this person.
2. The Tenant's position is that she never vacated the rental unit.

3. For the reasons that follow, the Landlord did not prove the allegations set out in the application. Therefore, the application is dismissed.

4. Section 100 of the Act states:

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.

5. To be successful in the application, the Landlord must establish that the Tenant transferred the occupancy of the rental unit to the Unauthorized Occupant in a manner not authorized by the Act nor approved by the Landlord, and the Landlord must also establish that the Tenant vacated the rental unit.

6. There is no dispute between the parties that the Tenant is the only name listed on the lease agreement which was signed in 2019. There is also no dispute that the Tenant emailed the Landlord in 2019 to inform them that the Occupant, later identified as Christopher Wilson, was going to be living in the rental unit.

7. The Tenant testified that the Occupant is the father of her 10-year-old daughter. They are not in a romantic relationship, but they co-parent well together and share responsibilities surrounding their child. They do not share financial responsibilities, including paying the rent. The Tenant testifies she pays the rent for the unit exclusively.

8. The Landlord uploaded a sworn affidavit from Michael McGurran, who is a maintenance worker for the Landlord. The affidavit stated that on May 24, 2025, he entered the rental unit for a scheduled maintenance request. The Tenant was not present, but that he spoke to the Occupant, who told him at the time the Tenant no longer resided there.

9. On May 26, 2025, the Landlord spoke to the Tenant on the telephone. The Landlord testified that in response to her inquiries about the unit the Tenant confirmed she moved out of the rental unit, but that she still needed the rental unit to maintain the address for her daughter for school purposes. The Tenant denies saying this to the Landlord.

10. The Landlord submits that on May 30, 2025, the Tenant sent her an email contradicting what was said on the telephone five days earlier. The Tenant stated in the email that there was some miscommunication between the parties and that she still resides in the rental unit. The Tenant indicated she has been dealing with family issues that required her to be out of town.

11. The Landlord uploaded pictures taken in the common hallway captured on the security camera. The Landlord relies on these photos to demonstrate the Tenant does not live in the rental unit. Still pictures were taken on seven different dates in January 2026, showing various images of the Occupant, the child, and the Tenant entering and exiting the rental unit.

12. The Tenant acknowledges she did not stay in the rental unit on those dates in question as she is dealing with personal family issues that required her to stay out of town.
13. The Tenant submitted into evidence various documents showing her address is that of the rental unit such as her tax assessments dated March 13, 2025, tenant's insurance that was renewed for one year starting May 17, 2025, and the most recent internet bill dated December 2025. There is no dispute between the parties that the Tenant pays the rent every month and there are no rent arrears.
14. The Tenant feels that the Landlord is trying to evict her because their rent is affordable, and that the Landlord recently advertised a similar unit for more money. The Landlord denies this claim.

Analysis

15. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true.
16. A sworn affidavit was entered into evidence where the maintenance worker stated the Occupant told him the Tenant had vacated. I have given the affidavit little weight; it was not enough to persuade me to come to the determination that the Tenant vacated the rental unit. Nor did the Occupant or the maintenance worker attend to testify.
17. It is a Landlord's application and thus it is the Landlord's burden to prove the tenancy was transferred in the face of direct testimony from the Tenant that no such transfer has taken place and that she remains in possession.
18. With respect to the May 26, 2025 telephone call, the Tenant denies having said to the Landlord she no longer resides at the rental unit but maintains the address for her daughter's school. The Landlord is adamant this is what she heard from the Tenant yet there was nothing about the Landlord's testimony that made her recollection of greater value. It is equally plausible there was a miscommunication between the Landlord and the Tenant because of the Tenant's personal family issues.
19. Although evidence does suggest the Tenant does not reside full time at the rental unit, this does not mean she has vacated the rental unit and transferred the tenancy to the Occupant. The Ontario Court of Appeal has stated that a tenant is in possession of a rental unit if there is a sufficient connection between the tenant and the unit and the tenant has some form of control over the unit such as access to, use of and occupation of the unit [*1162994 Ontario Inc. v Bakker* [2004 CanLII 59995 \(ON CA\)](#)].
20. In the case of *2295477 Ontario Inc. v. Cromwell*, 2017 ONSC 3048, the Divisional Court determined that a tenant can have more than one residence and the fact that a tenant may spend more of their time at another location is insufficient to determine that the tenant has transferred occupancy of the unit to another person.

21. The Tenant led direct evidence that she lives in the rental unit, still has all her personal possessions there, and pays the rent. There was no evidence the Tenant has limited access to the rental unit. On the contrary, the pictures relied on by the Landlord support that she comes and goes as she pleases. The undisputed fact that she pays the rent on time and in full goes a long way to persuade me that she is still very much connected to the rental unit. In my view, in absence of any other evidence, the Tenant meets the test of being in possession of the rental unit as set out in the *Bakker* decision.
22. Therefore, on a balance of probabilities, it is more likely than not that the Tenant did not vacate the rental unit and that the Tenant did not transfer the tenancy to the Occupant. As such, this application must be dismissed.
23. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence presented at the hearing and all of the oral testimony when making my determinations.
24. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's application is dismissed.

January 30, 2026
Date Issued

Paula West Oreskovich
Member, Landlord and Tenant Board

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