



Order under Section 100 101 Residential Tenancies Act, 2006

File Number: LTB-L-000472-25

In the matter of: 201, 1291 Bayview Ave
Toronto Ontario M4G2Z9

Between: 1044749 Ontario Ltd Landlord

And

Christopher Bertram Tenant

And

Luc Bertram Unauthorized Occupant
Unknown Occupant(s)

1044749 Ontario Ltd (the 'Landlord') applied for an order to terminate the tenancy of Christopher Bertram (the 'Tenant') and evict Luc Bertram and Unknown Occupant(s) (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.

1044749 Ontario Ltd (the 'Landlord') applied for an order to evict (the 'Subtenant') because the subtenancy ended and the Subtenant continues to occupy the rental unit.

This application was heard by videoconference on October 21, 2025.

The Landlord's Agent, Mikaela Viegas, the Landlord's Witness, Nelia Sto-Domingo, the Tenant, Christopher Bertram and the Tenant's Legal Representative, Rochelle F. Cantor attended the hearing.

The Unauthorized Occupant, Luc Bertram, was served with the notice of hearing but did not attend the hearing.

Determinations:

Preliminary Issue – Limitation Period in Section 100(2) of the Act

1. At the hearing, a preliminary issue was raised as to whether the Landlord has complied with the time requirement set out in subsection 100(2) of the *Residential Tenancies Act, 2006* (the 'Act') which states that "an application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy."

Evidence

2. The Tenant submits that as per a handwritten note from the Landlord's superintendent, Nelia Sto-Domingo ('NS'), the Landlord was aware as of May 25, 2023 that the Tenant, Christopher Bertram ('CB') did not reside in the rental unit on a full-time basis and had transferred occupancy of the rental unit to LB. NS's note, dated May 25, 2023, states that "tenant not living in the apt full time – he is splitting time between apt and other house with new wife." The note goes on to specify that CB works for the fire department and is only in town when he is working.
3. The Landlord submits that while it was aware that CB was in and out of the unit as per NS's note, CB continued to pay rent and the Landlord's understanding was that the Tenant maintained possession of the rental unit. The Landlord submits that they first became suspicious that the Tenant had transferred occupancy upon hearing it from the Tenant's son, Luc Bertram ('LB') on October 31, 2024, and confirmed their suspicion in November 2024 when NS contacted CB regarding items left in the hallway and began to observe that CB was no longer present at the residential complex.
4. NS also testified that in her work as the building superintendent for the residential complex, she regularly observes residents coming and going from the residential complex. NS testified that she has not observed CB coming or going from the unit or parking his car at the unit for approximately the past 3-4 months. NS testified that she has recently observed a different car parked in the Tenant's spot that does not belong to the Tenant.
5. NS testified that on approximately October 30, 2024, there was screaming, banging on the walls and shouting in the apartment. NS testified that she called the police but did not attend the rental unit. NS testified that at approximately 2:45 a.m. on October 31, 2024, LB began knocking at her door, calling her names, and stated that CB was not present at the building.
6. NS also testified that in November 2024, she contacted CB about items left in the hallway of the residential complex and CB was unaware of how long the items had been stored in the hallway. NS testified that at this point she became suspicious that CB no longer resided at the rental unit.
7. CB testified that he advised NS in May 2023 that he intended to retire in 2023 and informed the Landlord that he intended to vacate. However, CB testified that he subsequently decided not to vacate the rental unit and did not give notice to terminate as he had originally intended.
8. CB testified that while he has purchased another residence and has primarily resided there since he purchased the home in June 2023, he has kept the apartment which he uses when he returns to Toronto to attend events such as parades, funerals, medical appointments or other events in the city. CB testified that he still maintains possession of the rental unit and that the rental unit still contains his possessions.
9. In cross-examination, CB testified that the last time he stayed in the rental unit was in June 2025 when he slept at the apartment for a week, but asserts that he regularly returns to the

city to provide support for LB and for events and appointments and resides in the rental unit during that time.

Did the Landlord comply with subsection 100(2) of the Act?

10. Subsection 100(2) of the *Residential Tenancies Act, 2006* (the 'Act') states:

An application under subsection (1) must be made no later than 60 days after the landlord discovers the unauthorized occupancy.

11. While the Tenant submits that the Landlord did not comply with the requirements of subsection 100(2) of the Act as they ought to have been aware of the transfer of the occupancy by May, 2023, CB's own evidence was that he had informed the Landlord in passing that he intended to vacate upon retiring but that he subsequently changed his mind and decided to maintain possession of the rental unit for his own residential occupation and that as a result, he did not give the Landlord notice of termination.
12. The Landlord's testimony is that they became aware of the unauthorized transfer of the occupancy when NS communicated with CB in November 2024 about items left in the hallway and was informed by LB that CB no longer resided in the rental unit and I found this to be credible.
13. As a result, based on the evidence before me, I was satisfied on a balance of probabilities that the Landlord became aware of the unauthorized transfer of the occupancy from CB to LTB some time in November 2024. The Landlord subsequently filed the application on December 20, 2024. As a result, I find that the Landlord has complied with subsection 100(2) of the Act by bringing this application within 60 days from the date the landlord discovered the transfer of occupancy.

Did CB transfer occupancy to LB?

14. Subsection 100(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

If a tenant transfers 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.

15. It was undisputed between the parties that the alleged unauthorized occupant is the Tenant's son. There was also no dispute that the tenancy is between the Landlord and CB, and that LB is not a Tenant.
16. It was also undisputed that the Landlord did not authorize an assignment under section 95 of the Act or a subletting pursuant to section 97 of the Act.
17. The question before the Board is whether CB transferred occupancy of the rental unit to LB without authorization from the Landlord as outlined in subsection 100(1) of the Act.

18. The Landlord relies upon the Ontario Court of Appeal's decision in *Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA) ("*Nicholson*"), which is binding upon me. In *Nicholson*, the tenant moved out of the rental unit and into a house outside of the city where the rental unit was located and permitted two of his friends to move into the rental unit. In *Nicholson*, his friends lived in the rental unit and used it as a residence but Nicholson kept possessions in the rental unit and constructed a bedroom in the basement for his own use when he returned to the city for business.

19. The Court of Appeal in *Nicholson* stated at paragraph 20 and 21 that:

[20] ...Although Nicholson could take on a roommate without transferring occupancy of the unit, that is not what happened here, as the Tribunal recognized, Nicholson and his family have a home elsewhere. When he moved into that home, he handed over to his two friends—without the knowledge or consent of the University – the day-to-day occupancy of the rental unit.

[21] Finding a transfer of occupancy on these facts is consistent with the purpose of s. 81(1) [now RTA s. 100(1)] of the TPA, its purpose is to protect the landlord's expectation that the person with whom it contracted has a sufficient level of interest in the rental unit and the landlord's right to approve of anyone else who wishes to take over the unit.

20. The Court of Appeal further concluded in paragraph 24 of its decision that "here, Nicholson's limited use of the rental unit makes it impossible to conclude that he had not transferred the occupancy of it to his two friends."

21. Further, while not binding upon me, I agree with the reasoning in *Oz v. Shearer*, 2024 ONLTB 89030 (CanLII), at paragraph 118-122 which states:

118. The purpose of section 100 is to protect a landlord's: (a) expectation that the tenant will retain a sufficient level of interest in the unit; and (b) right to approve of anyone who wishes to take over the tenancy. [***Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 21**] Essentially, section 100 provides a landlord with a remedy where the tenant does not respect the landlord's rights under sections 95 and 97 of the RTA.

119. There is nothing in the RTA that requires a tenant to live in a rental unit or that prohibits a tenant from having another home. There is also nothing in the RTA that prohibits a tenant from having roommates or guests, even paying roommates or guests. [**See, for example, *Hines v Law Rootes*, 2022 CanLII 80817 (ON LTB), *Shalae v Talero*, 2022 CanLII 122591 (ON LTB) and *TSL-42098-13 (Re)*, 2013 CanLII 55624 (ON LTB) and *TNL-30607(Re)*, 2009 CanLII 79927 (ON LTB)**] What the RTA prohibits is the transfer of occupancy of a rental unit without complying with sections 95 or 97 of the RTA. The test under section 100 is not whether a tenant has abandoned the rental unit. It is whether they have transferred the residential occupancy of the unit to someone else. [***Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 17**]

120. On an application under section 100, the LTB must consider whether there is someone else who occupies the unit on a permanent basis and who ‘carried out all an ordinary person’s living activities’ at the unit. [***Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 24**]

121. Where the tenant and another person both occupy a rental unit, it is a question of fact and degree whether there has been a transfer of residential occupation of the unit from the tenant to the other person. [***Samuel Property Management Ltd. v. Nicholson*, 2002 CanLII 45065 (ON CA), para 23**]

122. The LTB must consider the facts of each case and determine whether the other person has come to have a greater residential connection to the unit than the tenant—whether the person is, by any measure other than being party to a tenancy agreement and paying rent to the landlord, the ‘tenant’. [**See, for example, *TSL-12299-19 (Re)*, 2020 CanLII 31426 (ON LTB) and *Mayfair Mansions Holdings Inc v Tenant*, 2021 CanLII 88092 (ON LTB)**] The LTB is also required to determine ##. [RTA, s. 202]

22. The facts in this case are similar to *Nicholson* in that insofar as CB appears to have moved out of the rental unit and into a home in Bobcaygeon with his wife in June 2023 where he primarily resides and returns to the city for business or other appointments.

23. However, I note that there are some distinguishing factors from *Nicholson*. In *Nicholson*, the Tenant had constructed a unit within the rental unit and allowed his friend to move into the rental unit, charging them in excess of what he was paying the Landlord and had moved out of the rental unit with his family.

24. In determining whether CB maintains any connection to the rental unit, I note the following. CB purchased a home in Bobcaygeon in June 2023 and moved into that home with his wife. CB maintained possessions in the rental unit and returns to the city periodically for medical appointments and other events in the city, at which point he stays in the rental unit. CB was unsure when he was last in the rental unit but stated he believed that he had stayed for a night in the rental unit in June 2025. Based on CB’s testimony it appears he lives in a different city and returns to the rental unit irregularly. In addition, LB’s son stated that CB does not reside in the rental unit.

25. In this case, I was satisfied that the Tenant’s son, LB retains a greater residential connection to the unit than CB who appears to have transferred possession of the rental unit to his son. LB lives in the rental unit day-to-day while CB maintains little connection to the rental unit besides paying the rent to the landlord.

26. Based on the evidence before me, I find that the Tenant has transferred occupancy of the rental unit within the meaning of section 100 of the Act.

Section 83 – Relief from Eviction

27. 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 March 30, 2026 pursuant to subsection 83(1)(b) of the Act.
28. The Tenant sought that in the event that the tenancy is terminated that the Tenant and LB would require over 6 months to move out of the rental unit as LB has supports in the community to assist with his disabilities and would require additional time in order to ensure adequate support.
29. While I am satisfied that LB will require some additional time to ensure continued support for his disabilities, I find that the amount of time requested by the Tenant to be unreasonable in the circumstances. However, I find that it would not be unfair to postpone the eviction to March 30, 2026 based on the submissions before me. The Landlord's evidence is that the Tenant continues to pay the rent on an ongoing basis and the prejudice to the Landlord is minimal.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of March 30, 2026.
2. The Unauthorized Occupant shall move out of the rental unit on or before March 30, 2026.
3. The Unauthorized Occupant shall also pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Unauthorized Occupant does not pay the Landlord the full amount owing by March 30, 2026, they will owe interest. This will be simple interest calculated from April 1, 2026, at 4.00% on the outstanding balance.
5. If the unit is not vacated by March 30, 2026, then starting April 1, 2026, the Landlord may file this order with the Court Enforcement Office (the Sheriff), so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord after April 1, 2026.

January 29, 2026
Date Issued

Christopher Lin
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.