



Order under Section 100 Residential Tenancies Act, 2006

File Number: LTB-L-083621-24

In the matter of: 309, 2 Quebec Street
Guelph Ontario N1H2T2

Between: Milldon Enterprises Ltd Landlord

And

The Estate of Teresa O'Reilly Tenant

And

Luke Garrity Unauthorized Occupant

Milldon Enterprises Ltd (the 'Landlord') applied for an order to terminate the tenancy of Teresa O'Reilly (the 'Tenant') and evict Luke Garrity (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 and April 21, 2026.

Only the Landlord's Agent, Lisa Ficher, and the Landlord's Legal Representative, Kate Schoffer, attended the hearing.

As of 9:30 a.m. neither the Tenant nor the Unauthorized Occupant was present or represented at the hearing although properly served with notice of this hearing by the LTB. The Landlord's Agent also made attempts to contact the remaining occupant in the unit, Dustin Chambers ('DC'), via phone and email between 9:10 a.m. and 9:30 a.m., however, DC did not reply. The hearing was also intentionally delayed by 30 minutes to allow for additional time for the Tenant, Unauthorized Occupant, and remaining occupant to attend, but none appeared. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

Preliminary Issue: Amending the Application

1. At the initial hearing on May 12, 2025, the Landlord's Agent confirmed that the only occupant in the unit was Dustin Chambers ('DC').

2. Luke Garrity ('LG') was the sole Unauthorized Occupant named on the application at the time it was filed. LG is the son of the Tenant who passed away on June 5, 2024, and he is also a named occupant on the lease agreement that commenced on December 1, 2021.
3. The Landlord did not become aware of the Tenant's death until another tenant in the residential complex informed them on August 15, 2024.
4. The Landlord's Agent testified that the Landlord became aware that the Tenant would be taking on a roommate in the unit around January 2024 to help with the rent. However, the Landlord was not aware of the roommate's name until January 2025 when DC came to her office to let her know that he pursued a trespass order against LG regarding the unit and then submitted a copy of his roommate agreement with the Tenant signed on March 1, 2024.
5. Given that DC was not a party to the proceedings at the time of the May 12, 2025 hearing, the matter was adjourned for the Landlord to submit a request to amend the application naming DC as an additional Unauthorized Occupant.
6. The issue before me at the subsequent hearing on April 21, 2026, was whether to grant the Landlord's request to amend the application. The Landlord's Agent confirmed that at the time the Landlord discovered the Tenant had died, the Landlord was aware that there were two occupants in the unit. When asked at the second hearing why the Landlord did not initially file the application with two respondents, naming LG and entering "Unknown" or "Unauthorized Occupant" for DC when his name was not known at the time, the Landlord's Agent replied that it was an error on the part of their prior legal representative, and the Landlord was under the impression that as LG's name was listed as an occupant on the lease, only his name was appropriate to be added as a respondent to the application. The same reasoning was used for why the application was not amended immediately upon learning of DC's name in January 2025.
7. This application is based on s. 100(1) of the *Residential Tenancies Act, 2006* ('Act') which 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.
8. Per s. 100(2) of the Act, the Landlord had to have filed their application no later than 60 days after discovering the unauthorized occupancy. The event that triggered the time limitation period to start was when the Landlord became aware of the Tenant's death on August 15, 2024. The Landlord filed their application on October 4, 2024, within the 60-day limitation period.
9. As the Landlord filed their application in time, I am required to consider the application and any request to amend. A request to amend an application is assessed under Rule 15 of the Board's Rules of Procedure. Rule 15.3 requires that I consider factors such as whether

the amendment was requested as soon as the need for it was known. In this instance, even if the prior legal representative made a mistake by not initially adding DC to the application as an unnamed Unauthorized Occupant, neither the Landlord nor any representative on their behalf requested to amend the application in a timely manner to add DC once the Landlord learned of DC's name in January 2025. The Landlord did not request to amend the application until May 12, 2025, almost five months later, which I find to be an unreasonable amount of time. I am not persuaded that ignorance of the law or the Board's Rules is a sufficient reason to justify such a significant delay. Consequently, I do not find it appropriate or reasonable to use my discretion to grant the Landlord's request to amend the application to add DC as an Unauthorized Occupant.

10. If a landlord's application regarding an unauthorized occupant was not filed with the Board within the 60-day limitation period, then there would be a deemed assignment of the tenancy to the unauthorized occupant, per s. 104(4) which states:

(4) A person's occupation of a rental unit shall be deemed to be an assignment of the rental unit with the consent of the landlord as of the date the unauthorized occupancy began if,

(a) a tenancy agreement is not entered into under subsection (1) or (2) within the period set out in subsection (3);

(b) **the landlord does not apply to the Board under section 100 for an order evicting the person within 60 days of the landlord discovering the unauthorized occupancy**; and

(c) neither the landlord nor the tenant applies to the Board under section 101 within 60 days after the end of the subtenancy for an order evicting the subtenant.

[emphasis added]

11. Per paragraph 11 of s. 56 of O. Reg 516/06, the Board does not have the authority to extend or shorten the 60-day period referred in s.104(4) of the Act.
12. The effect of denying the Landlord's request to amend the application to add DC as an Unauthorized Occupant is that there is a deemed assignment of the rental unit to DC, per s. 104(4) of the Act.

A2 Application:

13. LG, as the Unauthorized Occupant named in the application, was in possession of the rental unit on the date the application was filed.
14. As noted above, the application was filed within 60 days after the Landlord discovered the unauthorized occupancy on August 15, 2024.
15. The Landlord's Agent testified at the initial hearing that LG vacated the rental unit in November 2024 and had not returned to the unit since then. This was confirmed at the

second hearing by the Landlord's Agent who reiterated that LG has still not returned to the unit.

16. Given the Landlord's evidence and submissions, I am satisfied on the balance of probabilities that LG vacated the unit as of November 2024. Consequently, his consideration as an Unauthorized Occupant under this application is moot, and the application must be dismissed.

It is ordered that:

1. The application is dismissed.

April 27, 2026
Date Issued

Fotoula Hatzantonis
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.