



Order under Section 100 Residential Tenancies Act, 2006

Citation: 3875 Sheppard Avenue East Apts C/O AAB Legal Services v Vanderberg (Deceased),
2026 ONLTB 34842

Date: 2026-05-01

File Number: LTB-L-091948-25

In the matter of: 801, 3875 Sheppard Avenue East
Toronto On M1T3L6

Between: 3875 Sheppard Avenue East Apts C/O Landlord
AAB Legal Services

And

Elisabeth Vanderberg (Deceased) Tenants
Hendrik Vandenberg (Deceased)

And

Harry Vandenberg Unauthorized Occupant

3875 Sheppard Avenue East Apts C/O AAB Legal Services (the 'Landlord') applied for an order to terminate the tenancy of Elisabeth Vanderberg (Deceased) and Hendrik Vandenberg (Deceased) (the 'Tenants') and evict Harry Vandenberg (the 'Unauthorized Occupant' or 'HV') because the Tenants 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 April 7, 2026. The Landlord's Agent, Marie Canes, the Landlord's witness, Darren Gilbert ('DG'), the Landlord's Legal Representative, Carrie Aylwin, HV, and HV's Legal Representative, Brittany Rose Ward, attended the hearing. Elizabeth Vandenberg ('EV') also attended the hearing as a responding party to the application.

Determinations:

Agreed Upon Facts & Amending the Application

1. The parties agreed that the following facts were not in dispute:

- the Tenants are both deceased;
- only HV is occupying the rental unit and EV lives elsewhere; and

- the Tenants were the parents of HV and EV and they were children at the time the original lease was entered into.
2. As both parties agreed that EV does not reside in the rental unit, the application was amended to remove EV as a party to the application. The style of cause has also been amended.
 3. The application was also amended to reflect the correct monthly rent of \$1,405.22 which was the rent at the time the application was filed. The amendment was not opposed and was necessary in order to determine the daily compensation owing, if any.

Background & Application

4. After the death of the last remaining Tenant, Elisabeth Vanderberg, on or about September 29, 2025, the Tenant's son, HV, remained in the rental unit.
5. The Landlord filed an application with the Board to terminate the tenancy between the Landlord and the Tenants and remove any unauthorized occupants from the unit on October 27, 2025.
6. The Unauthorized Occupant was in possession of the rental unit on the date the application was filed.

Landlord's Evidence

7. DG Manages the residential complex and testified on behalf of the Landlord. It was DG's evidence that the Tenant, Hendrik Vandenberg, was the original lease holder when he leased the rental unit back in 1973. In this regard, he was the only one listed as the 'Tenant' in the lease agreement. He, together with his wife, who is the other named Tenant, Elisabeth Vandenberg, and their two children, HV and EV, were listed as the only permitted occupants of the rental unit. According to the lease, HV was 14 years old and EV was 17 years old at the time. A copy of the lease agreement was tendered as evidence.
8. Hendrik Vandenberg passed away and Elisabeth Vandenberg continued to reside in the rental unit thereafter. As she was the spouse of the leaseholder, and continued to reside in the rental unit, she became the Tenant.
9. DG stated that he became aware that Elisabeth Vandenberg passed away on or about October 17, 2025. Upon learning of her passing, DG sent a letter to HV, advising that the tenancy would terminate 30 days after the official date of death, being October 29, 2025. The letter also stated that HV was not a tenant on the lease but was noted in the lease as a minor occupant. In light of this, HV could vacate the rental unit or apply to rent the unit or a smaller unit and pay market rent. A copy of the aforesaid letter, dated October 17, 2025, was tendered as evidence.
10. HV responded by letter advising that he was obtaining legal advice and that he believed that there was a case to be made that he is in fact a tenant.

11. DG testified that he was aware that HV lived in the unit with his mother who was the Tenant. However, there were no discussions about adding HV to the lease before she died. According to DG, Elisabeth Vandenburg was the primary point of contact up until her passing. However, he acknowledged that the Landlord was not in direct contact with her often over the years as there wasn't really much reason to be.
12. DG also testified that HV has not paid any compensation for the use and occupation of the unit and, as result, the Landlord is seeking \$7,531.02 for the period from October 29, 2025 to the date of the hearing.

Unauthorized Occupant's Evidence

13. HV testified that he has lived in the rental unit since he was 14 years old and he is now 67 years old. In essence, it was his evidence that he was a tenant because he has lived in the rental unit continuously for over 50 years. In addition, the Landlord required him to pay a key deposit to obtain a FOB for the building. In this regard, he recalled going to the office and paying a \$25.00 deposit for the FOB. Thereafter, a staff member programmed the FOB. HV believed these actions implied a tenancy.
14. In terms of his interactions with the Landlord, HV stated that he did not really have to deal with the Landlord until recently and that he had received notices of entry that were slipped through the mail slot.

Analysis

15. Although the Landlord applied for termination of the tenancy as well as per diem compensation, the tenancy terminated automatically thirty days after the last Tenant's death pursuant to section 91 of the *Residential Tenancies Act, 2006* (the 'Act'). This raises the question as to whether a tenancy can be transferred to an unauthorized occupant by death, the Divisional Court appears to have accepted such a scenario as a possibility in *Jemiola v. Firchuk*, [2005] O.J. No. 6085.
16. Subsection 100(2) of the Act requires a Landlord to apply to the Board within sixty days of discovering an unauthorized occupancy. I find that the Landlord applied to the Board within the sixty-day time period.
17. In this case, the Unauthorized Occupant asserts that he is a Tenant.
18. The definition of "tenant" under the Act is:
 - a person who pays rent in return for the right to occupy a rental unit and includes the tenant's heirs, assigns and personal representatives, but "tenant" does not include a person who has the right to occupy a rental unit by virtue of being,
 - (a) a co-owner of the residential complex in which the rental unit is located, or
 - (b) a shareholder of a corporation that owns the residential complex;

19. A "tenancy agreement" under the Act is defined as:

a written, oral or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.

20. "Rent" under the Act includes,

the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or a landlord's agent for the right to occupy a rental unit...

21. The courts have held that the definition of 'tenant' and 'tenancy agreement' are broad and inclusive and should be broadly and liberally construed and that the Act has a tenant protection focus. In addition, subsection 202(1) of the Act requires the Board to ascertain the real substance of all transactions and activities relating to the rental unit.

22. HV's evidence was somewhat limited and vague with respect to his claims that he was a tenant. The fact that HV has resided in the rental unit continuously for many years does not in itself establish a tenancy. The Tenancy agreement was clear that HV was an occupant and a minor at the time the tenancy was entered into. HV's Legal Representative submitted that HV was always meant to be a tenant and that the only reason he was not was because he was a minor at the time the agreement was entered into. I disagree. Being a leaseholder comes with liabilities that do not come with being an occupant. For example, the obligation to pay rent. If it was intended by the Landlord and the Tenants for HV to become a tenant and share in the liabilities that come with it, then HV would have been added to the lease agreement at some point when he became an adult or there would have been some other form of documentation that confirmed that intention. However, there was not.

23. The evidence of HV was that the Landlord's conduct implied a tenancy when it required HV to pay a key deposit in exchange for receiving a FOB. I do not find this to be persuasive. As an occupant on the lease, it would not be unusual for a landlord to give the occupant a copy of a key or a FOB. The fact that HV might have paid a deposit for himself or on the Tenant's behalf to obtain the FOB does not establish a tenancy or imply one.

24. For the reasons provided above, I find on a balance of probabilities that HV is not a tenant and that the occupancy of the rental unit was transferred to HV in a manner that was not authorized by the Act, making HV an unauthorized occupant.

Daily Compensation

25. The Unauthorized Occupant has not paid the Landlord any compensation for the use and occupation of the rental unit. The Landlord is entitled to compensation for the use and occupation of the rental unit by the Unauthorized Occupant.

26. The Unauthorized Occupant owes the Landlord \$7,531.02 in daily compensation for use and occupation of the rental unit for the period from October 30, 2025 to the April 7, 2026, which is calculated as follows:

- $\$1,405.22 \text{ monthly rent} \times 12 / 365 = 46.19 \text{ per day for 2 days (October 30 to 31, 2025)} = \92.38 ;
- $\$1,432.31 \text{ monthly rent} \times 12 \setminus 365 = \$47.08 \text{ per day for 158 days (November 1, 2025 to April 7, 2026)} = \$7,438.64$
- $\$7,438.54 + \$92.38 = \$7,531.02$

27. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.

Section 83 Considerations

28. HV stated that if he were evicted from the rental unit, it would significantly impact his quality of life. In this regard he gave evidence with respect to his, age, his limited income, the fact that he does not have a car and that he relies on his sister, EV, who lives in the same building, for support and transportation as she has a car he is able to use. HV stated that he could not stay with his sister if evicted as he believed that it would ruin their relationship.
29. Given that HV is a senior and suffers from arthritis, he did not foresee being able to earn additional income. Currently his income is approximately \$3,500.00 per month, provided that he continues to work. He stated that he did try looking at other places but described the process as frustrating and depressing as the rents are more expensive now for less space and the utilities are often not included.
30. As HV has been living in the same rental unit for most of his life, and it is a three-bedroom unit, he has acquired a significant amount of furniture and other items. In light of this, and given that he has not found a place to move to, HV's Legal Representative requested that HV be given 12 months to move if eviction were ordered.
31. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act as it would be prejudicial to the Landlord.
32. I do not find the request to postpone eviction for 12 months to be reasonable in the circumstances. It has been 6 months since the application was filed, during which time HV could have explored his housing options. In addition, HV has not paid any compensation for the use and occupation of the unit.
33. That said, I do find some delay of eviction to be appropriate in the circumstances taking into consideration HV's circumstances, in particular that he is a senior citizen and has lived in the rental unit for over 50 years.
34. Accordingly, I find that it would not be unfair to postpone the eviction until May 31, 2026 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated.
2. The Unauthorized Occupant shall move out of the rental unit on or before May 31, 2026.
3. If the unit is not vacated by May 31, 2026, then starting June 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 June 1, 2026.
5. The Unauthorized Occupant shall pay to the Landlord \$7,531.02 which represents daily compensation for the use of the rental unit from November 30, 2025 to April 7, 2026.
6. The Unauthorized Occupant shall also pay the Landlord \$201.00 for the cost of filing the application.
7. The Unauthorized Occupant shall pay the Landlord the full amount owing by May 31, 2026. If they do not, the Unauthorized Occupant will owe interest. This will be simple interest calculated from June 1, 2026 at 4.00% on the outstanding balance.

May 1, 2026
Date Issued

Rachel Gibbons

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 December 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.