



MAY 3, 2023

**Order under Section 69
Residential Tenancies Act, 2006**

Citation: Abernethy v Clarke, 2023 ONLTB 34445

Date: 2023-05-03

File Number: LTB-L-052247-22

In the matter of: 2 Ground Floor Apt North Entrance, 135 KING HILLS LANE
KING CITY ON L7B1A3

Between: Brad Abernethy Landlord

And

Joan Jennifer Clarke Tenant

Brad Abernethy (the 'Landlord') applied for an order to terminate the tenancy and evict Joan Jennifer Clarke (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on April 4, 2023.

The Landlord, the Landlord's Representative Peter Swales, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of June 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

The Notice of Termination – Rental Unit is Properly Identified

3. On August 26, 2022, the Landlord gave the Tenant an N12 Notice with the termination date of October 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter.
4. The Tenant submits that the rental unit on the N12 Notice is not properly identified pursuant to section 43(1)(a) of the *Residential Tenancies Act, 2006* ('the Act'). The Landlord described the rental unit as "2 Ground Floor Apt North Entrance, 135 King Hills Lane, King City ON L7B1A3" on the N12 notice. The Tenant stated that because her mailing address is just "135 King Hills Lane", all of her government identification also just has the street address, and the Landlord has not properly registered the particularised description of her rental unit with the city, that the rental unit is not properly identified.

5. The Landlord previously filed a personal use application in which he only identified the rental unit as 135 King Hills Lane. On August 22, 2022 the Board dismissed the application as it did not properly identify the rental unit. In direct response to that order the Landlord put the number 2 on the rental unit.
6. I find that the rental unit is properly identified on the N12 notice. While the Tenant's mailing address, government identification, and what units are listed with the city may be relevant evidence in determining the proper description of a rental unit, I do not find them to be determinative. In this case there is no further particularization of the rental unit that is possible or needed. The Tenant lives at 135 Kings Lane, in a rental unit with 2 on the door. The unit is also on the ground floor and has a north entrance. The Tenant's argument is essentially that the Landlord cannot file an eviction application until he properly registers her unit with the city, not that the description of the rental unit fails to identify the rental unit. As the description of the rental unit does clearly describe what rental unit is the subject of this application, I find that the Landlord has satisfied section 43(1)(a) of the Act.

Personal Use

7. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter Jessica Abernathy ('J.A').
8. The rental unit is attached to the Landlord's residence.
9. The Landlord has served two N12 notices of termination prior to the notice that is the subject of this application. The Landlord testified that since those previous notices, his daughter Jessica Abernathy was evicted from her rental unit, and the Landlord's now needs the rental unit for his daughter's residential occupation.
10. The Landlord testified that since being evicted, his daughter is now living with him, but she is an adult who needs her own space. His daughter also works from home and needs more room to do that. The Landlord testified that there are four adults currently living in his home, himself, his partner, and two adult children, and as such it is very crowded.
11. The Landlord's adult daughter J.A testified that she was evicted from the rental unit she was previously living in and was forced to move back home because of the high cost of the rental market. J.A testified that she intends to occupy the rental unit for residential occupation and use it as a home office for at least one year.
12. The Tenant submits that the Landlord does not sincerely intend for his daughter to occupy the rental unit for residential occupation for at least one year. This is because the Landlord has served two previous N12s, and a previous N4, the Landlord has been inconsistent in what he has told the Tenant are his intentions for the unit, and the Landlord tried to illegally increase her rent in 2021.
13. On relation to one of the previous N12 Notices the Landlord stated that the rental unit would be for his own use and mentioned that his wife's parents are elderly and may need accommodation soon. There was also an affidavit created in relation to that notice from the Landlord's son that he wants to occupy the rental unit. In relation to the second N12 Notice the Landlord stated that he wanted the rental unit to turn it into his wife's craft studio.

14. For the reasons that follow, I find on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of their daughter's residential occupation for a period of at least one year.
15. I found both the Landlord and his daughter J.A to be credible in their testimony that the intention is for J.A to occupy the rental unit. This is because the testimony was offered in a forthright manner and withstood cross examination well. The Landlord and J.A did not deny that there has been previous intentions for the rental unit, but stated that J.A's eviction from her previous home has resulted in a change of circumstances such that she now needs to occupy the rental unit.
16. While I have considered that the Landlord has served multiple N12 notices of termination, which state different uses for the rental unit, that has not satisfied me that the Landlord is insincere in their stated intention. The three N12 notices of termination span from 2021 to 2022. Time had passed between each notice and the circumstances of the Landlord and his family have changed between each notice. I found the Landlord and J.A credible that J.A's eviction significantly changed the circumstances of the family and that they now need the rental unit for J.A's use.
17. I am also not satisfied that because the Landlord previously served an N4 and asked to illegally increase the rent that the Landlord is insincere in their stated intention. A landlord has the right to exercise their legal rights under the Act by serving an N4 if they believe their tenant is in rent arrears. Additionally, while the Landlord may have asked to increase the rent in 2021, that alone does not satisfy me that the Landlord is insincere in their stated intention. I found the Landlord and his daughter credible in their stated intention and that J.A's eviction changed the family's plan for the rental unit.

Compensation for the N12 Notice

18. The Landlord provided the Tenant with compensation in an amount equal to one month's rent on August 26, 2022 by cheque. That was before the date of termination in the N12 Notice and as such the Landlord satisfied the compensation requirements of the Act. The Tenant did not cash that cheque and it became stale dated. The Landlord provided the Tenant with a replacement compensation cheque on November 29, 2022. The Tenant returned that cheque to the Landlord.
19. While the Landlord has complied with compensation requirements in the Act, and it was the Tenant who refused to accept the compensation, the Tenant should still receive the compensation they are entitled to under the Act. On or before June 30, 2023 the Landlord is to provide the Tenant with compensation in the form of one month's rent.

Daily Compensation and the Last Month's Rent Deposit

20. Based on the Monthly rent, the daily compensation is \$19.73. This amount is calculated as follows: \$600.00 x 12, divided by 365 days.
21. The Tenant shall pay \$19.73 per day for compensation for the use of the unit starting April 5, 2023 to the date the Tenant moves out of the unit (minus any rent payments already made for that period).

22. The Landlord collected a rent deposit of \$600.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$8.88 is owing to the Tenant for the period from September 1, 2022 to April 4, 2023.
23. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from eviction

24. The Tenant requested relief from eviction in the form of a postponed eviction by 6 months. The Tenant testified that she has a medical condition that makes it difficult for her to go up and down stairs, and she will experience difficulty in finding a new rental unit that is suitable. The Landlord is opposed to any delay beyond 30 days as they are currently living in an overcrowded home.
25. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act. This is to provide the Tenant with time to find new living accommodations. However, I have declined to postpone the eviction date any further than June 30, 2023 as the Landlord has an immediate need for the rental unit and his current living arrangements are unsuitable for his family.

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 June 30, 2023.
2. If the unit is not vacated on or before June 30, then starting July 1, 2023, 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 July 1, 2023.
4. The Tenant shall pay \$19.73 per day for compensation for the use of the unit starting April 5, 2023 to the date the Tenant moves out of the unit (minus any rent payments already made for that period).
5. The Landlord shall apply the last month's rent deposit to the last month of the tenancy and pay the Tenant \$8.88 in interest for the period from September 1, 2022 to April 4, 2023.
6. On or before June 30, 2023 the Landlord is to provide the Tenant with compensation for the person use eviction in the form of one month's rent.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 3, 2023
Date Issued



Amanda Kovats
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 Tenant expires on February 1, 2024 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.