



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

Citation: Seignoret v Mcgavin, 2023 ONLTB 35958

Date: 2023-05-09


File Number: LTB-L-019434-22

In the matter of: 49 / 49B / 51 MARION ST
TORONTO ON M6R1E6

Between: Maurice Seignoret

And

Emily Mcgavin\ Jessica Sachse\ n Meagan Johnston

I hereby certify this is a
true copy of an Order dated
May-09, 2023

Landlord and Tenant Board

Landlord

Tenants

Maurice Seignoret (the 'Landlord') applied for an order to terminate the tenancy and evict Emily Mcgavin, Jessica Sachse and Meagan Johnston (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 26, 2023 at 9:00 a.m.

The Landlord, represented by Enio Zeppieri, a Lawyer (the “LLR”), and the Tenants, represented by Samuel Mason, a Lawyer (the “TTR”) , attended the hearing.

Determinations:

1. As a preliminary issue the TTR requested that the Board dismiss the Landlord’s application as it was not properly before the Board. The TTR submitted that the Landlord has not complied with section 71.1(3) of the *Residential Tenancies Act 2006* (the “Act”) which states, in part:

(3) A Landlord who, on or after the day subsection 11(2) of Schedule 4 to the Protecting Tenants and Strengthening Community Housing Act, 2020 comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

- a) Indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and

- b) Set out, with respect to each previous notice described in clause (a),
 - i) the date the notice was give
 - ii) the address of the rental unit in respect of which the notice was given,
 - iii) the identity of the intended occupant in respect of whom the notice was given if the notice was given under section 48 or 49, and
 - iv) such other information as may be required by the Rules.
2. Subsection 71.1(4) states that the Board shall refuse to accept the application for filing if the landlord has not complied with subsection 3.
3. The TTR submitted that the Landlord had previously served a Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit – Form N12 (the “N12 Form”) to Tenant Emily Mcgavin, but on the application the Landlord stated that “I have not given any other N12 Notices in the past two years for this rental unit or any other rental unit.”
4. The TTR submitted:
 - i) a copy of a Notice to End your Tenancy Because the Landlord, Purchaser or a Family Member requires the Rental Unit – N12, signed on October 25, 2020 by the Landlord Maurice Seignoret
 - ii) a copy of a Certificate of Service, signed and dated by Maurice Seignoret on November 11, 2020, that states that on October 26, 2020 that the Landlord did send by mail a N12 Notice by mail to the tenant of Basement Unit of 49B Marion Street, Toronto Ontario.
 - iii) a copy of a Board order, signed and dated by Member Dawn Sullivan on March 22, 2022 consenting to the withdrawal of the Landlord’s application to terminate the tenancy of the Tenant because the Landlord requires possession of the rental unit for the purpose of residential occupation.
5. The application before me was filed on April 4, 2022, which is less than two years after the previous N12 was given to the Tenant.
6. The LLR argued that although the Landlord may have previously served a N12 Notice on the Tenant, it was in his capacity as a Landlord requiring personal possession of the rental unit and that circumstances have changed. The current N12 Notice and Application are in the capacity as an “agent” for the purchasers and he is not required to disclose previous notices served for other purposes.
7. I agree with the Tenant that it doesn’t matter if the intended occupant of the rental unit was different on the previous N12. The wording of section 71.1(3) is clear – when filing the application the Landlord must disclose any previous N12 or N13 notice served on any rental unit and any tenant in the preceding two years, including notices served under section 49 for purchaser’s own use.

8. The omission of the prior N12 notice from the application makes the Landlord's application incomplete and misleading and defeats the intent of this provision, which is to ensure the Landlord's previous use of N12 and N13 notices is set out for the Board to consider. The application was not properly filed and Board should have refused to accept the application for filing because the Landlord had not complied with the Act requirements.
9. The Landlord has not complied with the requirements of sections 71 (1)(3) of the *Residential Tenancies Act 2006*, and therefore the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

May 9, 2023
Date Issued

A handwritten signature in blue ink, appearing to read 'PAVLOVIC', is written over a horizontal line.

Peter Pavlovic
Member, Landlord and Tenants 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.