



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

Citation: Robinson v Krupa, 2023 ONLTB 60052

Date: 2023-09-01

File Number: LTB-L-036230-23

In the matter of: 7 BOSTON AVE
TORONTO ON M4M2T8

Between: Patricia Robinson
Boston Properties Inc.

And

Edward Krupa
Christine Gardiner



Landlord

Tenants

Patricia Robinson and Boston Properties Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Edward Krupa and Christine Gardiner (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 August 23, 2023. The Landlord Patricia Robinson attended the hearing and was represented by Masoud Tchavoshi, paralegal. The Tenants attended the hearing and were represented by Leslie Mullen, paralegal.

Determinations:

1. For the reasons set out below, the Landlord's application is dismissed.
2. The Landlord's application is based on an N12 notice of termination served to the Tenants on April 28, 2023 with a termination date of June 30, 2023. The N12 notice asserts that the Landlord requires the rental unit for their own personal use for a period of at least one-year.
3. At the commencement of the hearing, I raised a preliminary concern with respect to the named Landlords on the notice and application. Both the notice of termination and application list Patricia Robinson and Boston Properties Inc. as Landlords. Ms. Robinson is the sole owner and controlling mind of Boston Properties Inc.
4. The tenancy commenced on May 1, 2022. The Landlords listed on this application were not the Landlords at the commencement of the tenancy. On November 15, 2022 the rental

property was purchased solely by Boston Properties Inc. On April 6, 2023, Boston Properties Inc. transferred a 1% interest in the property to Patricia Robinson for no consideration (\$0.00). Boston Properties Inc. remained as 99% owner of the property.

5. At the hearing, Ms. Robinson confirmed that when she purchased the rental property, she registered the title under Boston Properties Inc. for probate reasons and agreed that the transfer on April 6, 2023 was only completed after she learned that corporate landlords cannot serve N12 notices of termination for landlord's own use.

Analysis:

6. The Landlord's notice of termination was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act') which states, in part:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

- (a) the landlord;
- (b) the landlord's spouse;
- (c) a child or parent of the landlord or the landlord's spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

7. Subsection 48 (5) of the Act states:

(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

- (a) the rental unit is owned in whole or in part by an individual; and
- (b) the landlord is an individual [emphasis added]

8. Pursuant to subsection 48(5)(b), only a landlord which is an individual is authorized to serve a tenant with an N12 Notice of Termination on the ground that the landlord in good faith requires possession of the rental unit for the purpose of residential occupation.

9. Section 202 of the Act states:

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

- (b) may have regard to the pattern of activities relating to the residential complex or the rental unit

[emphasis added]

10. The effect of section 202(1) was considered by the Court of Appeal for Ontario in *Slapsys (c.o.b. 1406393 Ontario Inc.) v. Abrams*, [2010 ONCA 676](#), 268 O.A.C. 395, at para. [13](#):

Furthermore, by its language, s. 202 obligates the Board to ascertain the true substance of transactions, activities and the good faith of the parties when making findings on an application. It allows the Board to disregard the separate corporate existence of the parties to the transaction in doing so. These are matters that are relevant to an enquiry under s.48. As a result, we are satisfied that s. 202 is relevant to the determination of an application under s. 48 of the Act.

11. Applying section 202 of the Act to the facts before, I find that although there was an individual with a nominal interest in the property at the time the N12 notice was served, I find that the true Landlord is Boston Properties Inc., a corporate entity. The evidence is clear that the rental unit was entirely owned by Boston Properties Inc. up until April 6, 2023, which was only a few weeks prior to the service of this N12 notice.
12. The transfer of 1% of the ownership from the corporation to its principal for no financial consideration was not done in good faith. I find that this step was taken for the sole purpose of attempting to evade the Act's prohibition on corporate Landlord's serving N12s under section 48(5). Despite the April 6, 2023 transfer, the true Landlord was and continues to be a corporation, Boston Properties Inc. and not Patricia Robinson.
13. I further find that the reasons for Ms. Robinson registering title of the rental property under a corporation name and the fact that Ms. Robinson is the owner and sole operator of the corporation to be irrelevant. While there are many benefits to landlords registering title of their properties under a business entity, it comes with the consequence of not being able to serve notices of termination under section 48 of the Act. Further, almost all businesses and/or corporations have an individual officer or authorized agent who manages the day-to-day transactions of the company and who represents the corporation. Therefore, the fact that Ms. Robinson acts on behalf of Boston Properties Inc. does not alter the fact that Boston Properties Inc. is the true landlord.
14. I note that other Board Members had reached the same conclusion in similar circumstances where a corporate landlord has purported to transfer a small interest in the rental unit for the purpose of evading section 48(5) of the Act: *Malfara v Boyd*, 2022 CanLII 78811 (ON LTB); *Sauve v Chauvin*, 2022 CanLII 97395 (ON LTB),
15. As I have found Boston Properties Inc. to be the only true Landlord, the application must be dismissed as the Landlord was not entitled to serve the Tenants with the N12 notice pursuant to section 48(5) of the Act.

Costs against Landlord:

16. After I gave my oral ruling on the preliminary issue, the Tenant's representative requested that the Board order costs against the Landlord.

17. The Board's Interpretation Guideline 3 speaks to ordering costs against a party and requires that, in considering a request for costs awarded against a party, the Board consider whether the party's actions were unreasonable. A party's actions will be considered unreasonable if they cause undue expense or delay.

18. Pursuant to Guideline 3 conduct is considered unreasonable if it causes undue expense or delay and includes the following:

1. Bringing a frivolous or vexatious application or motion;
2. Initiating an application or any procedure in bad faith;
3. Taking unnecessary steps in a proceeding;
4. Failing to take necessary steps, such as those required by the *RTA* or Rules;
5. Any misconduct at the hearing or in the proceeding;
6. Raising an issue which is irrelevant to the proceedings and continuing to pursue that issue after the Member has pointed out that it is irrelevant;
7. Asking for adjournments or delays without justification;
8. Failing to prepare adequately for the hearing;
9. Acting contemptuously toward the Member or showing a lack of respect for the process or the Board;
10. Failing to follow the directions of the Member or upsetting the orderly conduct of the hearing; and
11. Maligning another party or unreasonably slurring the character of the other party.

19. The Tenant's representative advised that this is in fact the second L2 application filed by the same Landlord based on a similar notice of termination.

20. The Board's records confirm that the Landlord also filed application LTB-L-029963-23 on April 15, 2023. This application was also based on an N12 notice of termination for Landlord's own use. The notice on that application was served on April 6, 2023, and also had a termination date of June 30, 2023.

21. Application LTB-L-029963-23 was previously scheduled before the Board on July 12, 2023 and was adjourned due to a scheduling overflow. The Landlord withdrew this application on August 14, 2023.

22. When asked why the Landlord filed two L2 applications based on two separate notices of termination for the same grounds, the Landlord responded by stating that the N12 notice for file number LTB-L-029963-23 contained a clerical error with respect to the postal code on the notice. When I asked why the Landlord chose to proceed to a hearing with both

notices despite knowing of the error well before the hearing dates, the Landlord's representative provided no explanation.

23. In my view, I find that costs against the Landlord are warranted. Both notices of termination were served within 3 weeks of each other and both L2 applications were filed within 30 days of each other. Further, for both applications the Landlord requested that the Board expedite the scheduling of the hearings and both requests were granted.
24. The Landlord chose to proceed with two of the same type of applications filed within a short period of time and requested that the Board expedite the scheduling of both hearings. The fact that the Landlord served two of the same notices and filed two of the same applications within such a short period of time suggests to me that the Landlord was aware of the duplicate file and potential defective notice on the first notice served. Despite this, the Landlord proceeded with both applications and attended hearings on both similar applications.
25. I find that the Landlord's conduct has resulted in a waste of the Board's time as both applications were scheduled to be heard on an expedited basis. I further find that this conduct has caused an unnecessary inconvenience to Tenants and their representative, who also had to attend hearings for two separate and duplicate applications. The Landlord's conduct in this regard was unreasonable and resulted in delayed hearings for other parties.
26. In accordance with Rule 23.2 of the Board's Rules of Procedure, which states that costs should be awarded in the amount of up to \$100.00 per hour for attendance and preparation time, I find that the Tenants are entitled to costs in the amount of \$200.00. This amount includes \$100.00 for the time of hearing and \$100.00 for preparation for this matter.
27. I also find that it is appropriate to order the Landlord to pay \$100.00 in costs to the Board for the undue delay in the proceedings.
28. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Landlord shall pay to the Tenant \$200.00 in costs.
3. If the Landlord does not pay the Tenant the full amount owing by September 19, 2023, the Landlord will start to owe interest. This will be simple interest calculated from September 20, 2023 at 6.00% annually on the balance outstanding.
4. The Landlord shall pay costs of \$100.00 to the Board on or before September 19, 2023.

September 1, 2023

Date Issued



Fabio Quattrociochi

Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.