



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

Citation: Khan v Rego, 2023 ONLTB 62015

Date: 2023-09-15

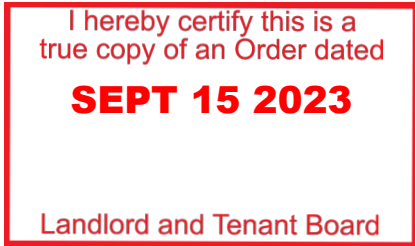
File Number: LTB-L-012179-23

In the matter of: 19 TILLINGHAST LANE
SCARBOROUGH ON M1J0A8

Between: Muhammad Khan

And

Andrew Rego
Kaitlyn Lauren Harris



Landlord

Tenant

Muhammad Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Andrew Rego and Kaitlyn Lauren Harris (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.

This application was heard by videoconference on June 14, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Marc Zel Goldgrub.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, an order shall issue terminating the tenancy on October 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession of the rental unit as of the hearing date.

PRELIMINARY ISSUE #1: COMPENSATION NOT PAID

3. At the hearing, the Tenant raised a preliminary issue with respect to the compensation required pursuant to section 48.1 of the Act. The Tenants allege this amount was not paid to the Tenants and therefore the Landlord's application must be dismissed.
4. The Tenants testified that the lawful monthly rent is \$2,400.00 and not \$2,200.00 as stipulated by the Landlord. Therefore, the compensation was short paid to them.
5. The Landlord testified that while the rent was \$2,400.00 at the start of the tenancy, in September 2021, the rent was decreased to \$2,200.00 based on an in-person verbal agreement between the parties.

6. The Landlord further testified that the compensation provided to the Tenants was a waiver of the rent for February 2023 as articulated in a letter to the Tenants sent by the Landlord's representative, dated January 23, 2023. This letter specifically states, in part, the following:

In tandem with the N12 notice of eviction served upon you, **my Client will be waiving rent due for the month of February 2023**. Such waiver shall serve as the one (1) month's rent compensation due any tenant(s) served with an N12, payable prior to the termination date set out therein.

7. Based on the evidence before the Board, regardless of what the rent was for February 2023, I find that the Landlord has met the requirement of compensating the Tenant by waiving the rent for February 2023 pursuant to sections 48.1 and 55.1 of the Act.
8. Thus, the Tenant's request to dismiss the Landlord's application must be denied and dismissed.

PRELIMINARY ISSUE #2: FAILURE TO DISCLOSE PREVIOUS N12 NOTICES

9. At the hearing, the Tenant raised a second preliminary issue with respect to the Landlord's application – specifically that it failed to disclose the three other N12s that the Landlord served to the Tenants between the period October 2021 – December 2021.
10. The Tenants testified that the Landlord's L2 application only discloses the most recent N12 that was served and dismissed by the Board due to the Landlord's failure to compensate the Tenants.
11. The Landlord submits that his intention was not to mislead the Board or the Tenants but that the N12 he had disclosed was the one that was previously filed with the Board; the other N12s did not make it to that stage.
12. Section 71.1(3) of the Act requires the Landlord to provide certain information about all N12 notices served in the previous two years with the Landlord's application. If this is not disclosed, sub-section 71.1(4) of the Act provides the Board must refuse to accept the application.
13. The Landlord's application was filed on February 7, 2023. In Schedule "B" to the Landlord's application, the Landlord advised an N12 was served with respect to the same rental unit on October 26, 2022 resulting in application LTB-L-019287-22.
14. A similar issue was raised in Board order TNL-36369-21 where Vice-Chair Speers addressed the purpose of Section 71.1(3) of the Act as follows:

...the apparent intention of this statutory amendment is to allow both tenants and the Board to observe a pattern in a landlord's conduct of using N12 and N13 notices, I believe that the disclosure of all N12 and N13 notices, valid or not, is the legislative intent of the provision. This legislative intent is underscored by the contemporaneous proclamation of subsection 72(3) of the Act, which expressly contemplates that "the Board may consider any evidence the Board considers relevant that relates to the landlord's or purchaser's previous use of notices of termination under section 48, 49 or 50."

...

The Act does not provide a clear consequence for a landlord's failure to meet their disclosure obligation under subsection 71.1(3). Subsection 71.1(4) provides that "The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)", but does not expressly address what happens when the Landlord has completed the appropriate section of the application, but has omitted one or more N12 or N13 notices. The position of the Tenant's representative is that the application ought to be dismissed based on the defect.

15. As did Vice-Chair Speers in TNL-36369-21, I accept that, in certain circumstances, where there is non-compliance with subsection 71.1(3) the application may be dismissed. However, in the circumstances of this application the Landlord disclosed the required information - although, incomplete, to the Tenant and the Tenant was aware of the N12s served on them as they raised the issue at the hearing. Further, I note that the individuals listed on the previous N12s include the Landlord and a member of their family (although that family member changes).
16. Therefore, I find the Tenant was not prejudiced in their ability to investigate patterns in the Landlord's use of N12 notices. Nor were they prejudiced in their ability to argue that any pattern undermined the good faith of the Landlord's service of the within N12 Notice.
17. As a result, I find the Landlord has complied with their obligations under section 71.1 and the Tenant's second motion to dismiss must also be denied and dismissed.

L2 APPLICATION

N12 Notice of Termination

18. By way of background, this tenancy began in 2020. The rental unit is a 3-bedroom house which the Tenants occupy with their 6 children ages 13,9,8,7,4, and 5.
19. On January 23, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2023 pursuant to subsection 48(1) of the Act. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.
20. The Landlord also met the requirements under section 72(1)(a) of the Residential Tenancies Act, 2006 (the 'Act') by filing with the Board a declaration, affirming that he in good faith requires the rental unit for his own personal use for a period of at least one year.
21. At the hearing, the Landlord testified that he owned the rental unit since December 14, 2014 and lived there until December 2019 when he moved to the USA for work. In August 2021, he gained employment in Canada and told the Tenants he would be returning to the rental unit.
22. The Landlord testified that he provided the Tenants with a N12 in September 2021 but the Tenants advised him that it was an old form, so he served a new one the following month.
23. As of the hearing date, the Landlord was renting a basement unit in Markham which cost him \$1,700.00. He testified that this has been financially difficult for him as the Tenants

have also stopped paying rent for the past 21 months, resulting in him having to sustain the expenses of not only his own rent but also the mortgage, property taxes, etc. of the rental unit.

24. The Landlord testified that the rental unit was never meant to be an investment property for him and that the Tenants had never expressed any doubt with the Landlord's intention to move back into the rental unit.
25. The Landlord seeks a termination of the tenancy, as soon as possible.
26. On cross-examination, the Landlord confirmed that while he had initially indicated that his parent would also be moving into the rental unit, circumstances had changed as his dad passed away in 2022 and his mother moved back home. The Landlord also clarified that the issue of renovations was raised by the Tenants after the Landlord had obtained their consent to start the work – a copy of the text message exchange was submitted into evidence.

Tenant's Request for Relief

27. The Tenants dispute the Landlord's intent to move into the rental unit given the different reasons provided and believe he wants the Tenants to move out so he can rent the basement at a higher amount to someone else. The Tenants testified that initially the Landlord indicated he would be separating the units so the Tenants could live upstairs, and the Landlord could reside downstairs. The Tenants did not understand why the Landlord required the entire home.
28. On cross-examination, the Tenants testified that they did not agree to the rent decrease; they also confirmed that they have been looking for another unit but have not been able to find something affordable. The Tenants further confirmed that they lost their job which is what resulted in the accrual of rent arrears. The Tenants also confirmed that they were surprised to receive the N12 in August 2021.
29. In the alternative, the Tenants seek a delay of 12 months to secure accommodation for themselves and their family.
30. The Landlord opposes the delay requested by the Tenant as it is excessive in length; further, this is not the first N12 that was served to the Tenant – and the Tenants have been on notice since 2021 of the Landlord's intent to move into the rental unit.

ANALYSIS

31. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), the Divisional Court considered the issue of good faith in the context of subsection 103(1) under the then *Landlord and Tenant Act*. The Court held that "the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
32. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), the Divisional Court stated the following:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a

family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

33. More recently, in *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court made the following remarks:

We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.

34. Based on the evidence before the Board I find that the Landlord has a genuine intent to occupy the property for the purpose of residential occupation by himself for at least one year. I make this finding based on the Landlord's testimony, which I accept.
35. While the Tenants believe the Landlord intends to rent out the basement unit, aside from their suspicions, there was no corroborating evidence submitted to the Board in support of these assertions.
36. Finally, with respect to the Tenant's request for relief, while I find the request for 12 months to be excessive in length, particularly given the circumstances, I am also mindful of the Tenant's familial circumstances; given the length of this tenancy, I find a short delay to October 31, 2023 to be appropriate under the circumstances.

Daily compensation, NSF charges, rent deposit

37. The Landlord collected a rent deposit of \$2,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$79.59 is owing to the Tenant for the period from August 10, 2020 to June 14, 2023.
38. 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

39. 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 October 31, 2023 pursuant to subsection 83(1)(b) of the Act.
40. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 October 31, 2023.
2. If the unit is not vacated on or before October 31, 2023, then starting November 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 November 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting June 15, 2023 until the date the Tenant moves out of the unit.
5. The Landlord owes \$2,479.59 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
6. The total amount the Tenant owes the Landlord is \$3,131.06, less any amounts already paid to the Landlord.
7. If the Tenant does not pay the Landlord the full amount owing on or before October 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from November 1, 2023 at 6.00% annually on the balance outstanding.



September 15, 2023
Date Issued

Sonia Anwar-Ali
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 May 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.