



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

Citation: Diaz v Quintero, 2024 ONLTB 8726

Date: 2024-02-02

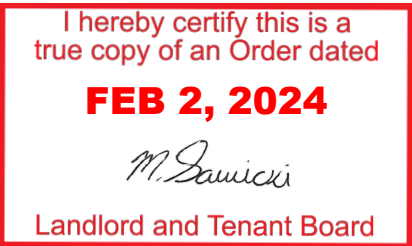
File Number: LTB-L-027169-23

In the matter of: Basement Unit 2 Rm 4, 69 Santamonica Blvd
Scarborough ON M1L4H3

Between: Mayra Diaz

And

Omar Quintero



Landlord

Tenant

Mayra Diaz (the 'Landlord') applied for an order to terminate the tenancy and evict Omar Quintero (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 January 8, 2024.

The Landlord, the Landlord's legal representative R. Bent, the Tenant and the Tenant's legal representative D. Cordaie attended the hearing.

Preliminary Issues: Related Application

1. This application was heard together with the application bearing file number LTB-L-027141-23. The two applications are based on separate but related N12 notices of termination. The tenants in the two applications are father and son and they each occupy part of the basement in the residential complex.
2. The Landlord submitted that Omar Raul Quintero Jr. resides in basement unit 1, bedroom 1, 2 and 3. Omar Raul Quintero Sr. resides in basement unit 2, bedroom 4.
3. In light of the fact that the issues in the two applications are the same, the parties agreed to have the applications heard together insofar as the Landlord presented their evidence once and then each Tenant had the opportunity to ask the Landlord questions and then to present their responding evidence. Throughout the order, any reference to the "Tenant" shall refer to Omar Raul Quintero Sr., and any reference to the "Tenants" shall refer to Omar Raul Quintero Sr. and Omar Raul Quintero Jr.

Tenant's failure to file evidence

4. In the middle of the hearing, the Tenants' representative led evidence related to an N11 agreement issued by the Landlord. The Tenants' representative submitted that he filed evidence with the LTB on December 31, 2023, however, none of the evidence was uploaded to the Tribunals Ontario Portal.
5. The Landlord's representative submitted that he was never served with any evidence as the attached document received via e-mail was not accessible. The Landlord's representative did not advise the Tenant's representative that he was not able to open the attached document.
6. I asked the Tenants representative if he wished to seek an adjournment to file evidence or if he was able to submit his evidence on the spot to allow the Landlord's representative to review the evidence and see if we would need to adjourn the matter. The Tenants' representative submitted that he was ready to proceed without the evidence as the Tenants want finality on the matter. On the request of the Tenants' representative, the applications proceeded without any documentary evidence submitted by the Tenants.
7. In closing submissions, the Tenants' representative requested that the Board consider the N11 agreements provided by the Landlord, however, the N11 agreements were never submitted into evidence as addressed during the hearing. It was the Tenants' representative submissions that he would file a review if I granted the Landlord's application. The Tenants and their representative were provided with sufficient opportunity to file their documentary evidence during the hearing and or request an adjournment to file such evidence. Both the Tenants and their representative declined these options and decided to proceed with the hearing without submitting any documentary evidence. Accordingly, I did not consider the N11s as part of my decision.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy shall terminate April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

Landlord's Own Use

3. On March 21, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 6, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Tenants do not dispute that the compensation required by section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') was paid by the termination date on the notice.

5. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement set out in subsection 48(1) of the Act which provides:

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, 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.
6. The residential complex is a semi-detached bungalow. The Landlord lives on the main level, in a unit that includes 2 beds, 2 baths and a den. The basement has 5 bedrooms, with 1 bath and 1 kitchen commonly shared by the Tenants. It was undisputed that the Landlord occupies one of the bedrooms as storage space.

Landlord’s Evidence

7. The Landlord testified that she no longer wishes to be a landlord and wants to use the basement for herself and her family.
8. The Landlord testified that she currently lives with her mother, her nephew and her roommate. The Landlord testified that her nephew is 16 years old and currently sleeps on the couch as there is no space for him in the bedrooms.
9. The Landlord testified that she suffers from sleep apnea and when she awakens in the middle of the night, she disrupts her mother’s sleep who also has medical issues and needs her rest. The Landlord testified that her mother must remain in the home as she takes care of her.
10. The Landlord submitted that she has good faith intentions to move into the basement portion of the property and will not rent out or sell the property as she renewed her mortgage on June 15, 2023 for a 5-year term. The Landlord further testified that the basement would be used by her and her nephew.
11. The Landlord testified that there is no written lease agreement with either Tenant. That oral agreements exist, where Omar Raul Quintero Jr. resides in basement unit 1, bedroom 1, 2 and 3. Omar Raul Quintero Sr. resides in basement unit 2, bedroom 4. The Tenants each pay separate amounts of rent and pay separately to the Landlord.

12. The Landlord testified that Quintero Jr. moved in November 2020 and that Quintero Sr. moved in May 2020.
13. The Landlord testified that prior to issuing an N12 notice, the Landlord issued prior N11 agreements on both Tenants but neither of the Tenants signed the N11 agreements and therefore, no contract was entered into to end the tenancy.

Tenant's Evidence

14. The Tenant, Quintero Sr. testified that the basement was rented as a whole to both Tenants jointly, not individually as suggested by the Landlord. Quintero Sr. did not dispute that he moved in before his son and that the rent is paid separately. The Tenant testified that separate payments are done for convenience, not because there are two separate rental agreements.
15. Quintero Sr. testified that when the Landlord issued the N11 agreements, she prepared the agreements by naming all of the occupants in the unit and not separately as the N12 notices were issued. That is because the N11 agreements were issued as a whole, the rental unit is also rented as a whole, and therefore, the N12 notices issued are invalid. The Tenant did not submit the N11 agreements as evidence.
16. Quintero Sr. testified that the Landlord wanted to terminate the tenancy because the Landlord's mother recently obtained her Canadian visa. He testified that the Landlord wanted the space for her mother. The Tenant testified that the Landlord never told him her mother would move in, however, the Tenant assumed this would happen as the N12 notice was served after the Landlord's mother came to the country.
17. Quintero Sr. further testified that when one of the N11 agreements was issued, the parties had an agreement to vacate the property provided that the Landlord pay him compensation. He testified that the Landlord later went back on her word and issued an N12 notice instead. The Tenant testified that the N11 was never signed and understands that there was never a finalized signed agreement for them to vacate.
18. Quintero Sr. submitted that if the Landlord has no space in the upstairs portion of the house, the Landlord should ask the roommate to vacate.
19. Quintero Jr. testified that the Landlord told them she was going to sell the house but that the Landlord changed her mind because it would be difficult for her to sell a house that is tenanted.
20. Quintero Jr. testified that they had an agreement to vacate the unit in April 2023 with compensation but that the Landlord changed her mind and issued an N12 notice instead. Quintero Jr. further testified that although there was a verbal agreement, the N11 agreement provided by the Landlord was never signed.

Analysis

21. In the leading case law involving a landlord's own use application, *Salter v. Belijinac, 2001*, a case in which the Landlord filed the application on the basis that he required possession of the rental unit for the purpose of residential occupation by his adult son and the son's family, the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal...

22. I find that the Landlord has proved, on balance of probabilities, that she in good faith, intends to move into the rental unit for the following reasons. The Landlord has recently signed a 5-year mortgage agreement. The number of people living in her unit exceeds the number of rooms in the unit and the additional space is required. Even if the Landlord were to request that her roommate vacate, the Landlord's nephew does not have a place to sleep.

23. Although the Tenants believe that the rental space will be used for the Landlord's mother, it was the Tenants' direct evidence that this is just an assumption of theirs and that it was always the Landlord's submissions to them that she would be the one using the basement portion of the home.

24. I find that there may have been a previous agreement to vacate with compensation, however, it was the Tenants' direct testimony that they did not sign any N11 agreements and refused the Landlord's offer.

25. With respect to the Tenants argument that the N12 Notice is invalid, I considered section 43 of the Act.

26. Section 43 of the Act sets out the minimum requirements for a notice of termination. It states:

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

(a) identify the rental unit for which the notice is given;

(b) state the date on which the tenancy is to terminate; and

(c) be signed by the person giving the notice, or the person's agent.

27. The Tenant argues that the N12 Notice is invalid because it does not accurately identify the rental unit. The Tenant argues that the rental unit is the entire basement and that he and his son are joint tenants under that agreement. However, I find that there are two separate lease agreements, as it was undisputed, that each of the Tenants moved in on separate dates and each of the Tenants pay the Landlord rent on different dates. I therefore find that each of the Tenants has a separate tenancy agreement with the Landlord and that they occupy separate parts of the basement under their agreements. Since the N12 notices properly identify each rental unit I find they are valid.

Daily compensation and rent deposit

28. The Tenant was required to pay the Landlord \$4,970.96 in daily compensation for use and occupation of the rental unit for the period from June 7, 2023 to January 8, 2024.
29. Based on the Monthly rent, the daily compensation is \$23.01. This amount is calculated as follows: \$700.00 x 12, divided by 365 days.
30. The Landlord collected a rent deposit of \$700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$14.05 is owing to the Tenant for the period from March 22, 2023 to January 8, 2024.
31. 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


32. The Tenants submitted that overall, they are in good health and are able to move out. However, if an eviction order was issued, they are looking to vacate by the end of April or May 2024 as it is wintertime and finding another apartment is difficult.
33. The Tenants submitted that they have not started to look for another unit as they were waiting for the outcome of the hearing and that when they were previously looking, the affordability was difficult. The Tenants submitted that they would like additional time to vacate.
34. The Landlord's representative submitted that the N12 notice was served in March 2023, that the Tenants have had 10 months to look for a new place and have failed to do so. The Landlord opposed a delay of the eviction date.
35. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act. Although the Tenants have had time to look for another apartment, the Tenants submitted that they did not want to start until the outcome of this application was finalized which is their lawful right. The issuance of an N12 notice is not an automatic eviction and the Tenant has a right to wait until an order is issued. The Landlord is not facing homelessness and did not lead any evidence on an emergent need for the unit.

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 April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, 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 May 1, 2024.
4. The Tenant shall pay to the Landlord \$4,970.96, which represents compensation for the use of the unit from June 7, 2023 to January 8, 2024.
5. The Tenant shall also pay the Landlord compensation of \$23.01 per day for the use of the unit starting January 9, 2024 until the date the Tenant moves out of the unit.
6. The Landlord owes \$714.05 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.
7. The total amount the Tenant owes the Landlord is \$4,256.91 (minus any rent paid for the period beginning June 7, 2023).
8. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.

February 2, 2024
Date Issued



Mayra Sawicki
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 August 14, 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.