



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

**Citation:** Lee v Wellington, 2024 ONLTB 7434

**Date:** 2024-01-31

**File Number:** LTB-L-045505-22

**In the matter of:** UPPER / SECOND FLOOR, 1067 DAVENPORT RD  
TORONTO ON M6G2C2

**Between:** Derrick Lee

**And**

Sherries Wellington  
Mapela Uhindu-Qingala

I hereby certify this is a  
true copy of an Order dated

**Jan 31, 2024**

Landlord and Tenant Board

Landlord

Tenants

Derrick Lee (the 'Landlord') applied for an order to terminate the tenancy and evict Sherries Wellington and Mapela Uhindu-Gingala (the 'Tenants') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 18, 2024.

The Landlord, the Landlord's legal representative Sarah Teal, the Landlord's witness Brian Shew and the Tenants attended the hearing.

The Tenants declined to speak with Tenant Duty Counsel.

**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, the tenancy shall be terminated.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The lawful monthly rent is \$1,700.00.
4. The rental unit is the upper second floor apartment in a single family detached home, with two other rental units.

N12 Notice of Termination – Purchaser’s Own Use

5. On August 12, 2022, the Landlord gave the Tenants an N12 notice of termination with a date of termination for October 31, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Purchaser.
6. The Landlord has proven that:
  - o the residential complex contains three or fewer units.
  - o the Landlord has entered into an agreement of purchase and sale of the residential complex.
  - o the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
7. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required stating that the purchaser intends to move into the rental unit for no less than one year.
8. Pursuant to s.49(1), the Landlord has compensated the Tenants an amount equal to one month's rent. The Landlord previously served the Tenants an N12 notice and paid compensation in the amount of \$1,700.00. Due to an administrative error, the Landlord withdrew that notice and issued a new N12 notice with a cover letter on August 12, 2022, advising the Tenants that the previous compensation is intended to satisfy the requirement to pay compensation as it was never returned to the Landlord. The Tenants did not dispute this position. I am satisfied the Landlord met the requirement for compensation.
9. The Landlord has within two years prior to filing this application, given notice under section 48, 49 or 50 of the Residential Tenancies Act, 2006 (the “Act”) in respect of the same or a different rental unit. The Landlord stated the notices were with respect to this residential complex.

The Good Faith Requirement

10. The Landlord’s disclosure included various documents including: the agreement of purchase and sale, amendments and communications. The Landlord also referenced Board order LTB-L-045506-22 with respect to another tenant in this residential complex.
11. The Tenants’ disclosure included various documents, listing information, receipts and communications.
12. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
13. The Landlord testified that he entered into an agreement of purchase and sale with Brian Shew (BS), the purchaser. He said the agreement is contingent on vacant possession and the Tenants did not vacate. The Landlord’s evidence includes several amendments to the closing date and several price reductions in consideration of the vacant possession clause.

14. The Landlord also testified that a prior N12 notice was served to the Tenants, the notice was defective and withdrawn and a new notice served.
15. The Landlord said this is the only remaining tenancy in the residential complex. The main unit has been vacant for some time and the basement unit Tenant was evicted under Board order LTB-L-045506-22.
16. It was the testimony of the Landlord that the Tenants have not paid rent for January 2024 and with the other vacant units, the carrying costs for the property are causing financial strain.
17. BS testified that he entered into an agreement with the Landlord to purchase the residential complex around March 28, 2022 with a closing date of June 9, 2022 and the agreement contained a vacant possession provision. When the Tenants did not vacate, several amendments have been made with various price reductions.
18. BS said that he purchased the residential complex with the intention of moving in with his wife and children. He testified that he purchased this property due to proximity to his in-laws, family and desired school options. BS said that his current living circumstances are less than ideal as it is a small one plus den unit which does not meet his growing family needs.
19. Under cross examination, BS confirmed his intention to occupy the rental unit and has no intention of re-renting units. He testified that this in a real estate consultant but does not buy and sell real estate.
20. The Landlord seeks immediate termination of the tenancy and compensation.

#### The Tenants' Evidence

21. The Tenants testified that they do not accept the authenticity of the agreement of purchase and sale and do not believe that purchaser intends to move into the rental unit and both the Landlord and the purchaser have acted in bad faith.
22. The Tenants submitted a copy of a listing advertisements from an online website and said the residential complex was delisted and the never saw a sold sign on the signage at the residential complex.
23. The Tenants did not submit any substantive evidence to support the proposition that the agreement of purchase and sale is fraudulent, other than their belief that they parties have not acted in good faith.
24. The Tenants seek a dismissal of the Landlord's application, or in the alternative relief from eviction.

Law and Analysis

25. The N12 notice was served pursuant to section 49(1) of the Residential Tenancies Act, 2006 (Act) which states, in part:
26. A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,
- (a) the purchaser;
27. The onus is on the Landlord, as the applicant, to establish that there is a valid agreement of purchase and sale in place and that the purchaser, in good faith, has a genuine intention to occupy the premises. *In Feeney v. Noble, 1994 CanLII 10538 (ON SC)*, the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the proposal.
28. In *Salter v. Beljinac, 2001 CanLII 40231 (ON SCDC)*, [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court again held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. Thus, the Landlord must establish that the purchaser genuinely intends to move into the unit. The Court also held in *Salter* that the Landlord's motives are 'largely irrelevant'.
29. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's position nor do I doubt the truthfulness of the Purchaser's intention to move into the rental unit. I am therefore satisfied on the balance of probabilities, that the Landlord, in good faith, served the Tenants with the N12 notice and that the Purchaser requires possession of the rental unit for the purpose of residential occupation and that he genuinely intend to reside in the unit for at least one year.
30. Additionally, I find the Tenants led insufficient evidence to support the proposition of a fraudulent arrangement between the Landlord and the purchaser.

Relief from Eviction

31. The Tenants suggested the Board should dismiss the Landlord's application due to the maintenance issues related to a leak in the residential complex and withholding rent receipts.
32. As discussed at the hearing, s.83(3)(a) defines circumstances where:
- 3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,
- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

33. Based on the evidence before the Board and on a balance of probabilities, I do not find the circumstance of the leak nor the issue of rent receipts rise to the level to warrant refusal of the Landlord's application. In my view, the leak issue is better suited for a tenant application and I was satisfied the issue of the rent receipts was resolved by the date of the hearing.
34. Both Tenants said they have been laid off from work for several weeks and have no knowledge when they can anticipate a return to work.
35. The Tenants said they would require 5 months to find alternative accommodation. The Tenants also said they have spent around one day looking for housing options, have not made application and chose to wait until this hearing and the outcome.
36. The Landlord testified that due to the several closing date amendments and reductions, he has lost around \$60,000.00 and has had to borrow money from family. He said this has caused substantial financial pressure and strain on family relationships.
37. The Landlord also submits that the Tenants have had the benefit of a significantly delayed Board decision as the parties attended a previous hearing and the order was not issued which then led to this de novo hearing.
38. Although this is a lengthy tenancy, based on the party submissions, I find it would be unfair to grant relief. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

#### Daily Compensation

39. The Tenants were required to pay the Landlord \$24,815.34 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to January 18, 2024.
40. Based on the Monthly rent, the daily compensation is \$55.89. This amount is calculated as follows: \$1,700.00 x 12, divided by 365 days.
41. The Landlord collected a rent deposit of \$1,700.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, is owing to the Tenants.
42. 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.
43. 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 Tenants is terminated. The Tenants must move out of the rental unit on or before February 15, 2024.
2. If the unit is not vacated on or before February 15, 2024, then starting February 16, 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 February 16, 2024.
4. The Tenants shall pay to the Landlord \$24,815.34, which represents compensation for the use of the unit from November 1, 2022 to January 18, 2024, less any monies already paid to the Landlord.
5. The Tenants shall also pay the Landlord compensation of \$55.89 per day for the use of the unit starting January 19, 2024 until the date the Tenant moves out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before February 15, 2024, the Tenants will start to owe interest. This will be simple interest calculated from February 12, 2024 at 7.00% annually on the balance outstanding.



**January 31, 2024**  
**Date Issued**

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Dana Wren  
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 Tenants expires on August 15, 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.