



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

Citation: Sereguina v Topash, 2024 ONLTB 17045

Date: 2024-03-08

File Numbers: LTB-L-050720-22

LTB-T-049492-22

In the matter of: 154 COUNTRYMAN RD
EAST GWILLIMBURY ON L9N0N8

Between: Inna Sereguina
Veronika Koltunova

And

Grigory Topash
Mina Bogodelny

I hereby certify this is a
true copy of an Order dated
MAR 08, 2024
Landlord and Tenant Board

Landlords

Tenants

Inna Sereguina ('I.S') and Veronika Koltunova (the 'Landlords') applied for an order to terminate the tenancy and evict Grigory Topash and Mina Bogodelny (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 Tenants also applied for an order determining that the Landlords:

- entered the rental unit illegally.
- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant.

These applications were heard by videoconference on November 17, 2023. The second named Landlord, the Landlord's legal representative, Sarah Teal, the Landlords witness, Ashley Reis, the Tenants, the Tenants representative, Evgeny Aptekar, the Tenants witness, E. Shapiro, and their other witness, Eli Schwarz attended the hearing.

Determinations:

Landlords' Application:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is granted, and the Landlords are entitled to an eviction order.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On August 26, 2022, the Landlords gave the Tenants an N12 notice of termination with the termination date of November 6, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlords have compensated the Tenant an amount equal to one month's rent by November 6, 2022.

Do the Landlords genuinely intend to move into the rental unit?

5. The first question to be answered on an application such as this is whether or not the Board believes that the Landlords genuinely intend to move into the rental unit. For the following reasons I find on a balance of probabilities that the Landlords have established a genuine intention and therefore, I also find that the Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
6. The Tenants do not believe that the Landlords have a genuine intension to move in because they say prior to the N12 being given, the Landlords had placed the rental unit on the market for sale in August 2022.
7. The Landlords do not deny that they had done so. They stated that initially they intended on selling the rental unit due to inflation of the mortgage. The Landlords then considered their finances and their circumstances and decided that they would be in a better position to move into the rental unit which would allow them to consolidate expenses. The Landlords also stated that in coming to this conclusion, difficulty selling the property was another factor.
8. One of the Landlords recently had a baby and would like the additional space to raise her child. The Landlords stated that they work from home. One lives in a condo and the other lives in an apartment building.
9. The Tenants questioned the Landlords intent with respect to giving the notice throughout the hearing. They led extensive cross examination with respect to their motives, their intention to move in, and questioned their creditability with respect to working from home as the Tenants say the Landlords were not truthful on this point.
10. The Tenants say that they called I.S' place of employment on November 7th and 8th of 2023. The recording of the office directory indicated that I.S was in the office. The Tenants also stated that on one of the days they spoke with the office secretary, who on one of those dates stated that I.S was working for the company and could transfer the call to her office.
11. The Tenants also had a package requiring I.S' signature delivered to the location of her employer. The Tenants hired a delivery person to deliver the package. They stated that he was someone they had used in the past to pick up fabric parcels for the Tenants' business. The Tenants stated that they have known him for about 4 years and paid him \$50.00 cash to deliver the package.
12. The Tenants called the delivery person, Eli Schwarz ('E.S') to support the specifics of the delivery. He testified that on November 15, 2023, he arrived at 9:00a.m. and spoke to a person by the name of Ashley, who stated that I.S was not in at that time but would be in

later that day around 12:00 p.m. E.S returned, and the package was signed by I.S and delivered.

13. E.S stated that he was given less than \$30.00, by e-transfer. He also stated that he has only known the Tenants for less than a year, he met them at a picnic and has completed less than 10 deliveries for them over the course of their relationship.
14. I.S stated that she does primarily work from home however sometimes when there are meetings or needs to pick up something from the office, she will go in. She testified that in a month she may go in 4 or 5 times, for a couple hours each time. I.S stated that on November 15, 2023, she got a call that there was going to be a package for her to pick up and so 'I.S' scheduled herself to go in to meet the delivery person as the package required her signature.
15. The Landlords called Ashley Reis as a witness, who works with I,S as one of the accountants from the business. She remembered November 15, 2023, and confirmed that she met with E.S in the morning and told him to come back later in the day for I.S to sign for the package. She also confirmed that I.S primarily works from home and also provided an explanation with respect to how calls come in and are directed throughout the company.
16. Calls that come into the business are initially answered by a receptionist, who then transfers them to the respective employee's cell phone. So regardless of if they are in the office or working from home, the employee will receive the calls.
17. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
18. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
19. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
20. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

"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.”

21. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
22. Although the timing of the Landlords placing the property on sale and the service of the notice of termination is considerably close proximity to one another. I do not find that the Landlords do not genuinely intend to move into the rental unit. I accept their testimony regarding their intention. It was clear, forthcoming, cohesive, and therefore I find it reliable. I accept that the Landlords may have initially intended to sell the rental unit, however after further reflection- decided that moving into the rental unit may be better suited for their needs. I do not find that this change of feeling would undermine their intention to move in.
23. Furthermore, even though the reasonableness of the Landlords' choices to serve the notice is not overly relevant- when considering I'S' credibility- I also do not find that she was attempting to mislead the Board with respect to working from home. On this point, I also prefer the evidence of the Landlord.
24. I say this because the testimony between the Tenants and their witness, E.S was inconsistent to some degree. The length in time they knew one another, how much E.S received as compensation, and the method of payment. These things should have been easily rememberable, however were factually in consistent with one another.
25. The Landlords collected a rent deposit of \$2,500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$89.42 is owing to the Tenant for the period from December 6, 2020 to November 17, 2023 .
26. 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:

27. 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 June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
28. The Landlords purchased the rental unit jointly, however, do not live together. They testified that due to financial stress I.S was facing eviction proceedings with respect to her living situation. She testified that her landlord filed an application for rent arrears and as of the date of the hearing she owed the Landlord approximately \$8,000.00 The other Landlord recently had a baby and was on maternity leave from work which also impacted their income. Moving into the rental unit will decrease the Landlords expenses. The Landlord's maternity leave ends May 26, 2024.
29. I was given the file number for the L1 application regarding rent arrears involving I.S. the Board's records show that the landlord withdrew that application on January 6, 2024. So, it would appear there is no immediate threat of eviction any longer.

30. The Tenants have lived in the rental unit since 2021, they have 3 minor children living with them who go to school in the area. The Tenants also stated that their kids also have after school programs in the area that they would prefer not to be interrupted.
31. The Tenants also testified that they purchased a home that is currently not livable and they do not have extra funds to move as they have been renovating their purchased property.
32. I accept the Tenants concern with respect to interrupting their children's social activities and schooling. Therefore, I find the termination date of June 30, 2024 to be reasonable in the circumstances. It provides both parties time to plan for this next living accommodation, may provide the Tenants time to finish renovations on their purchased property, but is not so extensive that it shall severely prejudice the Landlords. I acknowledge that they have been waiting to regain possession- however, they are not under immediate threat of eviction that unlike the Tenants.

Tenants' Application:

33. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
34. In the Tenants' application they take issue with the Landlords' conduct as outlined below:
 - August 8, 2022, notice of entry;
 - August 14, 2022, notice for landscaping & inspection;
 - August 15, 2022, inspection;
 - August 20, 2022 & August 22, 2022, viewings for potential purchaser;
 - August 25, 2022, cleaning of the yard, 4 winter tires missing;
 - August 26, 2022, inspection; and
 - Correspondence sent by the Landlord that the Tenants believe was pressuring or harassing in nature.
35. As already stated, in August of 2023, the Landlords put the rental unit on the market for sale, but shortly after decided that they no longer wished to sell the rental unit but rather wanted to move into the property.
36. During the hearing the Tenants did not dispute the legality of the entries by the Landlords however, raised issue with what transpired or events that took place once the Landlord gained entry to the rental unit. I believe that those claims are better addressed pursuant to the Tenants allegations of substantial interference and harassment.
37. In or around early August 2022, there was a discussion regarding a copy of a key to the rental unit needing to be supplied by the Landlords. On August 8, 2022, the Landlords served a notice of entry to the Tenants informing them that they would be coming to the rental unit on August 9, 2022, to change the locks.
38. Before the Landlords attended the rental unit the Tenants wrote to them telling them that they would provide them a copy of the key which was completed on August 15, 2022. Therefore, the need for the entry was not needed. There was copies of the correspondence between the parties submitted as evidence during the hearing.

39. On August 14, 2022, the Landlords served the Tenants with a notice of entry stating that on August 15, 2022, between the hours of 6:00 p.m. and 8:00 p.m. a landscaping contractor would be attending the property to give an estimate for landscaping and lawn repair. The notice informs the Tenants that they need not be present for this inspection.
40. Also on August 15, 2022, the Landlords' real estate agent, Elena Shapiro ('E.S') attended the property to place a for sale sign and an inspection of the rental unit. The Tenants say that once E.S entered into the rental unit, she did not complete an inspection- rather began to threaten the Tenants regarding their need to vacate the property.
41. E.S was called as a witness by the Tenants during the hearing. E.S testified that she was only in the rental unit approximately 5 minutes and remained on the first floor. She was there to place a key in a lock box in preparation of upcoming showings. She also did an inspection of the outside of the rental unit. E.S denied that there was any hostile negotiations or behaviour.
42. On August 20, 2022 and August 22, 2022, the Tenants say that there were scheduled viewings for potential purchasers. Someone attended with their own realtor on August 20, 2022. However, on August 22, 2022, no one showed up despite being given a notice of entry.
43. The Tenants say that this negatively impacted them as they would make arrangements to stay home and so when there was a no show- it would affect their daily routine.
44. The Landlords say that the showings were canceled which may happen from time to time and that the Tenants were notified of the cancelation. The Landlords said they provided the Tenants phone number to an application service which would send them an SMS text message of scheduled or canceled showings. The Landlords also say that it was the Tenants who canceled the showings.
45. On August 25, 2022, the Landlords attended the property of the rental unit due to an issue with by-law infractions. There was a chicken coop erected on the property by the Tenants and it was required to be removed. The Tenants say that when the Landlords attended the property, they took 4 winter tires.
46. There was no dispute regarding the by-law infractions or that the Landlords provided the Tenants with advance notice to remove the chicken coop. The Landlords deny removing any tires. They say that all that was removed was debris from the coop and garbage.
47. The Tenants also say that there were some specific communications with the Landlords that they believed to be harassing in nature. They stated that when they told the Landlords that they would not be moving out pursuant to the notice, the Landlords threatened them to move into the basement and that the notices of entry were so excessive that they found them to be harassing. The Tenant also says that as a result of the Landlords conduct she was placed on anxiety medication.

Analysis:

48. I find that the Landlords and/or their agents did not substantially interfere with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a

member of their household. I also do not find that the Landlords or the Landlords' agent harassed, obstructed, coerced, or threatened or interfered with the Tenants.

49. Although the Act does not define the term 'harassment' it is generally understood to be a course of conduct that one would consider to be most unwelcomed.
50. Based on the evidence educed at the hearing, I do not find that the Landlords conduct rose to the level of harassment or substantial interference. Although, some of the messages may have made the Tenants upset or uncomfortable- the Landlord never acted on moving into the basement of the rental unit, nor did they engage in a course of conduct.
51. I also do not find that the notices of entries amounted to substantial interference or harassment. I say this because the notices were given over an approximate 3 week period, globally there were approximately 7-8 notices served. Some of which were not needed as the Landlord was not entering the rental unit, rather conducting inspections or work on the outside of the premises, or the notices were no longer needed as the showings were canceled.
52. Canceled showings are something one could reasonably foresee when a property is on the market. I do not find that the Landlords conduct was unreasonable and in the event that the Tenants were not put on notice of the canceled showings, the evidence suggests that 2 were where no one showed up and so the impact on the Tenants was minimal.
53. On any application before the Board, the person who alleges any particular incident or event occurred has the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case that burden falls on the Tenants.
54. For the reasons that follow, the Board finds that the Tenants have led insufficient evidence to establish that the Landlords' realtor E.S substantially interfered with their reasonable enjoyment and that the Landlords took 4 winter tires and that their conduct required to take additional medication.
55. Both parties gave testimony who were reliable and so I find them creditable. E.S reiterated her version of events and stated that she did not yell at the Tenants or tell them that they needed to move out of the rental unit. Similar to the Landlords in stating that they did not take any winter tires. They recalled what transpired during the day and their time at the rental unit. The testimony was coherent and made sense.
56. The Tenants also failed to provide sufficient evidence for me to conclude that the medication she was taking was as a result of the Landlords conduct. No witnesses were called to discuss the Tenants medical history and the Tenant did state that she was on some form of anxiety medication before the notice of termination, or these events transpired.
57. As such- the Tenants application is dismissed.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 30, 2024.

2. If the unit is not vacated on or before June 30, 2024, then starting April 1, 2024, the Landlords 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 Landlords on or after July 1, 2024.
4. The Tenants' application is dismissed.

March 8, 2024
Date Issued



Curtis Begg
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on December 30, 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.