



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-30570-21

In the matter of: 1301, 10 NORTH TOWN WAY
TORONTO ON M2N7L4

Between: Joo Yeun Nam Landlords
Dong Yeun Nam

and

Ju Young Park Tenants
Jueun Park

Joo Yeun Nam (JYN) and Dong Yeun Nam (DYN) (the 'Landlords') applied for an order to terminate the tenancy and evict Ju (Sara) Young Park (JYP) and Jueun Park (JP) (the 'Tenants') because the Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on July 5, 2021. The Landlords, their Representative, Siqi (Lily) Yao, and the Tenants attended the hearing.

Young Bok Nam's divorce attorney, Clara Yoo and the Tenants' mother, Hye Kyung (HK), attended as witnesses.

Determinations:

1. This application is based on a Notice of Termination for Non-Payment of Rent (N4) served on the Tenants on January 12, 2021 with a termination date of January 31, 2021.
2. At the outset of the hearing the Tenants raised the issue as to whether or not the application was properly before the Board. The Tenants suggest this is a family dispute and should be adjudicated in another court of competent jurisdiction. I proceeded to hear the Tenants arguments.
3. The Tenants advise they moved into the unit in November 2019. It is their evidence that the unit was purchased by their mother's husband, YBN, as an investment and the Tenants were to maintain the unit until it was to be resold. YBN and HK lived in British Columbia at the time. The Tenants testified there was no expectation to pay rent, and that they never made any payments to YBN for rent.
4. On June 25, 2020, YBN asked the Tenants to sign a Standard Ontario Lease Agreement, back dated to November 30, 2020. The stated rent is \$2,000.00. The Tenants were

advised by their mother and YBN that this was necessary so YBN could obtain a mortgage on the rental property. As they were “family” and wanted to help YBN obtain his mortgage, they did as asked. The Tenants signed the lease, dating the document for November 30, 2019.

5. The marriage between HK and YBN broke down in September 2020 and HK moved in with the Tenants. The first time they became aware that they were expected to pay rent was when they were served with a Termination Notice for Persistently Late Payment of Rent (N8) in October 2020 given by YBN.
6. The Tenants testified they have minimal financial means, JYP was a student with part time employment and student loans, and JP was unemployed, relying on savings and his mother for spending money. It is the Tenants’ position they could never afford \$2,000.00 per month rent and would not have moved in had they been required to pay rent.
7. In response to my questions JYP advised there has never been a rent increase and there is no Rent Deposit. JYP advised they moved out of the unit in May 2021 in response to an agreement brokered in Family Court.
8. HK then gave her oral testimony. HK speaks Korean and her testimony was translated by her son, JP. I canvassed the LLR and she had no objection to allowing JP to translate the testimony as the Landlords speak Korean and would speak up if they felt the translation was inaccurate.
9. HK advised that her ex-husband purchased the unit as an investment and permitted her children to live rent free in the unit. HK was not named on title or the mortgage.
10. The Landlord’s Representative attempted to call CY as a witness. Before being permitted to testify I asked the Representative if CY had any direct knowledge of the transactions. As she did not, I declined to hear her testimony. Although not directly raised by either party, there was a suggestion that the residency of HK in the rental unit precluded any legal action against the Tenants. This is not a matrimonial home. YBN and HK never lived in the property together, and the property was purchased as an investment.
11. The Landlord’s Representative did not call any other witnesses. She tendered documentary evidence including the transfer of ownership, dated January 8, 2021, from YBN to the current Landlords, who are YBN’s adult children, and the signed lease agreement, signed and dated by the Tenants and YBN. It is the representative’s position that the existence of a signed Lease Agreement is sufficient evidence of the obligation of the Tenants to pay rent.

Analysis

12. There is no question the applicants are the Landlords, having purchased the property from their father, YBN on January 8, 2021. As the Landlords they are entitled to collect rent lawfully owed, including any rent arrears that accumulated before the change of ownership.

13. A Landlord is defined by section 2 of the *Residential Tenancies Act, 2006* (the 'Act'), which says that "landlord" includes
- (a) the owner of a rental unit who permits occupancy of a residential unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,
 - (b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and
 - (c) a person other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent.

14. Section 2 of the *Act* defines rent as follows:

Rent includes the amount of any consideration paid or given or required to be paid or given by or on behalf of a tenant to a landlord or the landlord's agent for the right to occupy a rental unit..."

15. The Tenants have testified they never paid rent, were not required to pay rent at the outset of the tenancy and that rent only became due when the relationship between YBN and HK broke down.

16. Section 202 of the *Act* states:

In making findings on an application the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or 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 the participants; and
- b).May have regard to the pattern of activities relating to the residential complex or rental unit.

17. I accept the oral testimony of the Tenants:

- that YBN permitted the Tenants to live rent free in the unit as of November 2019, the date the Tenants moved in to the rental unit;
- that the Tenants signed and backdated the Standard Lease Agreement on June 25, 2020;
- that YBN attempted to collect rent only after his marriage to the Tenants' mother broke down;
- that YBN transferred ownership of the property to his adult children on January 8, 2021

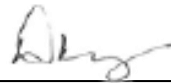
- that the new Landlords served the Tenants with an N4 after they took ownership

18. I find, based on the balance of probabilities that no Landlord-Tenant relationship exists/existed between YBN and the Tenants, and therefore between the named Landlords and the Tenants. YBN was a benefactor to the Tenants and then changed his mind following his marriage break up. However, just because YBN changed his mind, does not mean he can impose a new agreement or alter an existing agreement. The new owners are bound by the terms of the original agreement and are not, therefore, entitled to collect rent pursuant to the *Residential Tenancies Act*.

It is ordered that:

1. The Landlords' application is dismissed.

January 5, 2022
Date Issued



Dawn King
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.