Order under Section 16.1 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

Citation: Ezer v Sachse, 2023 ONLTB 76736
Date: 2023-11-27
File Number: LTB-L-023552-23-IN

In the matter of: 49 MARION ST
TORONTO ON M6R1E6

Between: Darren Ezer
Lianne Ezer
Mitra Norouzi
Adam Milewski
Vivian Shah — Landlords

I hereby certify this is a true copy of an Order dated
NOV 27, 2023
Landlord and Tenant Board

And

Jessica Sachse — Tenant

INTERIM ORDER

Darren Ezer, Lianne Ezer, Mitra Norouzi, Adam Milewski and Vivian Shah (the 'Landlords') applied for an order to terminate the tenancy and evict Jessica Sachse (the 'Tenant') because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year. The Landlords also claimed compensation for each day the Tenant remains in the unit after the termination date.

This application came before the Board by videoconference on October 12, 2023.

The first and last-named Landlords above, and the Tenant attended the hearing. The Landlords were represented by Roman Komarov. The Tenant was represented by Samuel Mason.

Determinations:

1. The Tenant seeks an order dismissing the application on a preliminary basis. The Tenant argues that s. 48(5) is ambiguous, and in the circumstances here it should be interpreted to exclude the Landlords from bringing this application. For the following reasons, that request is denied.
2. The circumstances here are that the five named Landlords do not own equal shares of the residential complex. The first two named Landlords are related and at the time the notice of termination was served on the Tenant, they were joint owners of an 85% interest in the property. The other three Landlords appear to be related to one another but not to the first two, and each of them co-owns a 5% share in the residential complex. There is a co-ownership agreement which clearly indicates the intent of this arrangement

is that the first two named Landlords will be bought out of their entire share in the property over time by the remaining three Landlords. This application is based on a notice of termination for landlord's own use where the person who allegedly intends to move into the rental unit is the third-named Landlord above.

3. The Tenant argues the Landlords do not have standing to bring this application because the person who allegedly intends to occupy the rental unit is a minority owner. She does not possess a sufficient degree of ownership to obtain possession by way of a notice of termination issued pursuant to s. 48 of the Act.

4. There is no dispute that the third-named Landlord above is on title and therefore an "owner" of the residential complex. Therefore, she meets the definition of "landlord" set out in paragraph (a) of the definition contained in s. 2(1) of the Act.

5. But the Tenant argues that s. 48(5) narrows the definition of "landlord" for the purposes of an application like this one. It says:

> This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,
>
> a) the rental unit is **owned in whole or in part by an individual**; and
>
> b) the landlord is **an individual**.
>
> [Emphasis added.]

6. The Tenant argues that when s. 48(5) was added to the Act the Legislature did not turn its mind to this issue. The Tenant further argues it would create an absurdity to interpret "in part" to include a fractional interest of less than 50% because that would open up a slippery slope of potential abuse. Landlords could sell a tiny fractional interest in a residential complex to create an opportunity for them to evict a tenant for a stranger to the property or tenancy to move in, thereby getting around the tenant protection focus of the Act enunciated in s. 1. Finally, the Tenant argues the application is premature because under the co-ownership agreement the ownership share of the third-named Landlord will escalate eventually to the point where they have more than a small fractional interest.

7. The Tenant relies on paragraph 40 of the Divisional Court's decision in *Manikam v. Toronto Community Housing Corporation*, 2019 ONSC 2083. It says:

> One of the Act's purposes is to provide protection for residential tenants from unlawful eviction. The Act is remedial legislation with a tenant protection focus. It must be given a fair, large, and liberal construction to ensure the attainment of that object. If there is any ambiguity in the interplay between the various sections of the Act, it should be resolved in accordance with the tenant protection focus (*Matthews v. Algoma Timberlakes Corp*., 2010 ONCA 468 (CanLII), [2010] O.J. No. 2710 (C.A.), leave to appeal refused [2010] S.C.C.A. No. 369; *Price v. Turnbull's Grove Inc*., 2007 ONCA 408 at para. 44).

8. The problem with this argument is that although it may well be that the Legislature did not consider this particular type of situation when it drafted s. 48(5), that does not make the provision ambiguous on its face or conflict with other provisions of the Act. The obvious intent of s. 48(5) was to ensure that corporate landlords could not evict tenants for landlord's own use. The problem that the Tenant is concerned with – tiny fractional interest being sold as part of a scheme to get around the tenant protection focus of the Act - has nothing to do with s. 48(5).
9. I agree with the Landlord that the issue the Tenant raises with respect to a tiny fractional interest being sold or created to get around the tenant protection focus of the Act is one that the Board can and will deal with when it arises. For example, consider the situation where a landlord sells a fractional interest to a prospective tenant in order to put that person on title where the intent of both parties is for the prospective tenant to go into possession and then pay the landlord a much increased rent. That situation may well constitute an abuse of process and the Board has the ability to dismiss such an application outright pursuant to s. 197(1). And even in less clear situations, the Board can and will dismiss applications pursuant to s. 83 where it would not be unfair to do so.
10. Given all of the above, I am not prepared to dismiss the application outright based solely on the fact that the person who proposes to move in is a co-owner with only a 5% interest in the residential complex. Co-ownership is not that unusual. Nor is it unusual for only one co-owner to be seeking to move in. So simply pointing to the 5% ownership of the third-named Landlord is not enough without something more.
11. I would also observe that section 202 of the Act provides that in making findings on any application, the Board shall ascertain the real substance of all transactions and activities relating to the residential complex or a rental unit and the good faith of the participants. This means that if the Tenant believes that the Landlords are attempting to mislead or deceive the Board with respect to the co-ownership arrangements, the Tenant may lead evidence at the merits hearing on that issue.
12. The hearing of this application will proceed for a hearing of the merits.
13. I am not seized.
14. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The hearing of this application is adjourned to a date to be set by the Board.
2. On or before November 30, 2023 the Landlords and the Tenant shall give to the Board their unavailable dates for the period December 1, 2023 to March 31, 2024.

November 27, 2023
Date Issued

Curtis Begg
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.