



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-53241-21

In the matter of: 322 MORNINGTON AVENUE
LONDON ON N5Y3C1

Between: David Moore Landlord

and

Catherine Mitchell Tenant

David Moore (the 'Landlord') applied for an order to terminate the tenancy and evict Catherine Mitchell (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard via video/teleconference on October 25, 2021.

The Landlord, the Landlord's Legal Representative Anna Maria-Franze and the Tenant attended the hearing.

Determinations:

1. This is an application under section 48(1) of the *Residential Tenancies Act, 2006* (Act).
2. Subsection 48(1) of the *Residential Tenancies Act 2006* ('the Act') which states in part:
"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 by
 - (a) the landlord,
 - (b) the landlord's spouse, or
 - (c) a child or parent of the landlord or the landlord's spouse.
3. The Landlord served the Tenant a (N12) Notice to End the Tenancy setting out that the Landlord requires possession of the rental unit for the following reason.
 - for Landlord's own use.
4. The termination date set out in the (N12) notice was July 31, 2021.
5. The Tenant did not vacate the rental unit in accordance with the N12 notice given.
6. The technical requirements for granting an application under section 48 of the Act are
 - a) With regard to the notice, subsection 48(2) states - the date for termination specified in a notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

7. The Landlord filed a Certificate of Service (COS) stating that the Notice was given to the Tenant June 1, 2021.
8. The Tenant disputes that she was given the notice on June 1, 2021 and asserted she was given the notice on June 2, 2021. A copy of a text message sent by the Landlord to the Tenant dated (June 2, 8:53 am) was submitted that stated

"Hello Kat, I left a couple of notices at the house today. This is your 60 days notice to move out of the property at 322 Mornington Ave. I will be moving into the house, after July 31".

9. I find the text message stating on June 2, I have left a couple of notices at the house today contradicts the date set out in the Certificate of Service that the notice was given June 1.
10. I was therefore not satisfied due to the ambiguity of the documents filed, on a balance of probability, that the Landlord gave the required minimum 60 days notice after the notice was purportedly given.
- 2 Therefore, I find that this N12 notice does not comply with the notice requirements contained in section 48(2) of the *Residential Tenancies Act, 2016* (the 'Act').
- 3 Consequently, the N12 notice is defective, and the Board does not have the jurisdiction to end the tenancy based on an invalid notice given to the Tenant.

It is ordered that:

1. The Landlord's application is dismissed.



November 4, 2021
Date Issued

Randy Aulbrook
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.