



## **Order under Section 87 Residential Tenancies Act, 2006**

**Citation:** Teixeira v Mezzatesta, 2024 ONLTB 9261

**Date:** 2024-02-02

**File Number:** LTB-L-013960-23

**In the matter of:** 8D, 240 Westmeadow Drive  
Kitchener Ontario N2N0A1

**Between:** Mike Teixeira Landlord  
Jennifer Teixeira

**And**

Cheryl Mezzatesta Former Tenant

Mike Teixeira and Jennifer Teixeira (the 'Landlord') applied for an order requiring (the 'Former Tenant') to pay the rent and daily compensation that the Former Tenant owes.

This application was heard by videoconference on January 4, 2024.

The following people attended the hearing:

The Landlord, Mike Teixeira.

The Landlord, Jennifer Teixeira

The Tenant, Cheryl Mezzatesta.

### **Determinations:**

1. As explained below, the Landlord proved the allegations contained in the application on a balance of probabilities. Therefore, the Tenant owes the Landlord arrears of rent for August

2022 and daily compensation for October 1, 2022 the day the Tenant occupied the rental unit.

2. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing at least 30 days before the hearing in accordance with Rule 3.3 of the LTB's Rules of Procedure.
3. I am satisfied that the Landlord served the Former Tenant with the application and Notice of Hearing using a method permitted in subsection 191(1.0.1) of the *Residential Tenancies Act, 2006* (the 'Act') and Rule 3.3 of the LTB's Rules of Procedure.
4. These documents were served on October 30, 2023 by mailing the documents to the Tenants current address.
5. The Former Tenant vacated the rental unit on October 1, 2022.
6. The application was filed within one year after the Former Tenant ceased to be in possession of the rental unit.

#### Rent and compensation owing

8. The Former Tenant has not made any payments since the application was filed.
9. The tenancy ended as a result of the Former Tenant providing the Landlord with more than 60 days notice in an email sent from the Tenant to the Landlord. The Landlord acknowledged the Tenant's vacate date of September 30, 2022.
10. The Former Tenant did not vacate on September 30, 2022 and vacated on October 1, 2022 therefore the Tenant's obligation to pay rent ended on that date.
11. Based on the rent, the daily rent/compensation is \$50.14. This amount is calculated as follows: \$1,525.00 x 12, divided by 365 days.
12. The rent arrears and daily compensation owing to October 1, 2022 are \$1,575.14.
13. There is no last month's rent deposit.
14. The Landlord incurred costs of \$201.00 for filing the application and they are entitled to reimbursement of those costs.
15. The total amount the Tenant owes to the Landlord is \$1,776.14.

Did the Landlords provide an N12 notice to the Tenant

16. The position of the Landlord is that they informed the Tenant they intended to sell the rental unit in a conversation on June 15, 2022 and explained to the Tenant how the process would work.
17. Tenant took it upon herself to email the Landlord on July 25, 2022 and inform the Landlord she intended to vacate the rental unit on September 30, 2022 and the Tenant vacated on October 1, 2022.
18. The Tenant took it upon herself to not pay the August 2022 in lieu of what she believed she was owed for compensation of an N12 notice, however the Landlord claims no such notice or likeness was served.
19. The Landlord testified the house was put up for sale July 1, 2022 and a conditional offer was provided to the Landlord on September 14, 2022, however the Tenant was never provided an N12 notice for purchaser's own use.
20. The Landlord is seeking the unpaid rent for August 2022 and the one day daily compensation for October 1, 2022.
21. The position of the Tenant is she claims the Landlord provided her with enough details to satisfy the requirements of an N12 notice and she vacated as a result of that notice.
22. The Tenant does not dispute the Landlord informed her they intended to sell the house in the June 15, 2022 conversation. The Tenant testified that the Landlord's informed her that she may have to move out within 60 days if the rental unit was sold.
23. The Tenant testified that given the information provided to her by the Landlord, she felt pressure to find new housing quickly, and due to the high demand for rentals, she did not want to be without housing or forced to pay much higher rent if the Landlord's sold the house quickly.
24. The Tenant testified that the Landlord offered her the option to waive rent for one month given the Landlords were selling the house, and the Tenant exercised this option and with held the August 2022 rent.

The Act and Analysis

*Did the Landlord's notice meet the requirements?*

23. This application was filed pursuant to subsection 57(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act') that requires the Tenant to prove each of the following on a balance of probabilities:

- The Landlord gave the Tenant an N12 notice of termination under section 49 of the Act;
- The Tenant vacated the rental unit as a result of the N12 notice of termination;
- No person referred to in subsection 49(1) or 49(2) of the Act occupied the rental unit within a reasonable time after the Tenant vacated; and
- The Landlord served the N12 notice of termination in bad faith.

24. Notice under section 49 states:

Notice, purchaser personally requires unit

49 (1) 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;

(b) the purchaser's spouse;

(c) a child or parent of the purchaser or the purchaser's spouse; or

(d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. 2006, c. 17, s. 49 (1); 2021, c. 4, Sched.

25. There is no dispute the Landlord's informed the Tenant they intended to sell the house and informed the Tenant she may have to move.

26. Even in the absence of a Landlord serving a Board form N12 notice, if the details provided by the Landlord to the Tenant meet the criteria of a notice, then the first test has been met.

27. The Tenant claims that she vacated due to the understanding the Landlords were providing her with an N12 notice and took it upon herself to withhold the August 2022 rent in lieu of compensation she felt she was owed.

28. The Tenant provided testimony she was unaware that she did not have to move and could have waited for the Landlord to serve a proper N12 notice.

29. In my view, the Landlords communications as a whole do not suggest there are enough details provided that are sufficiently analogous for a notice of termination that would meet the requirements for a purchasers own use notice.
30. Further, the specific person identified as the intended occupant on an N12 notice under section 49 states the notice is for a purchaser or immediate member of the purchaser's family. In this case not only had the Landlord not yet entered into a purchase and sale agreement with any potential purchaser the Landlord had not even put the rental unit up for sale. Therefore in the absence of any "purchaser" any likeness of a notice under section 49 does not exist.
31. While the Tenant maintains she moved out as a result of the Landlord telling her they "intended" to sell the house, the Tenant was not bound to do so and she had the opportunity to remain in the rental unit and wait until the Landlord served a proper N12 notice.
32. With the evidence before me an on a balance of probabilities, and given the fact the Tenant does not dispute withholding the August 2022 rent I find the Tenant owes the Landlord the arrears for August 2022 and one day daily compensation for October 1, 2022.
33. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
34. This order contains all reasons for the determinations and order made. No further reasons will be issued.

**It is ordered that:**

1. The Former Tenant shall pay to the Landlord \$1,776.14, which represents rent and compensation owing up to October 1, 2022. This amount represents:
  - \$1,525.00 August 2022 rent
  - \$50.14 October 1, 2022 daily compensation
  - \$201 for the cost of the filing fee
2. The total amount the Former Tenant owes the Landlord is \$1,776.14.
3. If the Former Tenant does not pay the Landlord the full amount owing on or before February 13, 2024, the Former Tenant will start to owe interest. This will be simple interest calculated from February 14, 2024 at 7.00% annually on the balance outstanding.

**February 2, 2024**

**Date Issued**

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**Greg Brocanier**

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.