



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

Citation: Moon v Clarke, 2024 ONLTB 21357

Date: 2024-03-25

File Number: LTB-L-055752-23

In the matter of: 2508, 88 CORPORATE DR
SCARBOROUGH ON M1H3G6

Between: Jiwan Moon Landlord

And

Karen Clarke Tenants
S. Clarke
T. Clarke

Jiwan Moon (the 'Landlord') applied for an order to terminate the tenancy and evict Karen Clarke, S. Clarke and T. Clarke (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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on February 14, 2024 at 2:19 p.m.

The Landlord Jiwan Moon, the Landlord's representative Agatha Small licensed paralegal and the Tenant Karen Clarke and the Tenant's representative Naseer Ahmed, licensed paralegal attended the hearing. Jessica Moon also attended the hearing as a witness for the Landlord.

When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On June 30, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2023. The Landlord, Jiwan Moon, claims that they require vacant possession of the rental unit for the purpose of their own residential occupation along with the Landlord's spouse Jessica Moon and their young children.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (1) 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;
 - (c) a child or parent of the landlord or the landlord's spouse;
 - (2) The date for termination specified in the 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.
5. In this case, the N12 notice gives the Tenant over 60 days' notice and the termination date is the day a period of the tenancy ends.

Compensation

6. It is undisputed the Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2023. The Landlord's representative testified that on July 25, 2023, she wrote to the Tenant notifying the Tenant that the compensation paid to the Tenant in May 2022 as part of their previous application (LTB-L-031443-22), since not returned to the Landlord, would be applied to satisfy the requirements under Section 48 *the Act* for the current application (LTB-L-055752-23). The Landlord submitted a copy of the letter into evidence supporting their testimony.
7. The question I must consider is whether the compensation paid under the previous application satisfies the requirements under *the Act*, more specifically whether the previous transaction applies as valid compensation under the current application?
8. Relevant paragraphs in LTB-L-031443-22 explain the facts around how the compensation was paid to the Tenant under the previous application:
 3. The Landlord did not pay the Tenant compensation equivalent to one month's rent by the termination date or offer an alternative unit. The Tenant submitted that the Landlord sent her a text message on June 03, 2022, at 1:39 pm to inform her that the Landlord had waived May 2022 rent as compensation. The Landlord submitted an N4 notice to the

Board as evidence, establishing that the Tenant is in arrears from June 01, 2022, to January 31, 2023, and that there was no claim made for May 2022 rent as she waived May 2022 rent as compensation.

9. The Tenant's representative submitted that compensation was not paid for this application, and was only paid related to the previous application, and therefore the Landlord did not meet the conditions under Section 48.1 of *the Act* and the application be dismissed.
10. The Tenant's representative disputed that the Landlord be granted the ability to apply a previous payment from a previous application to the current application given these are independent applications.

Analysis

11. I find that valid compensation was paid under the current application.
12. The Landlord is relying on the fact that under a previous application that waived the rent for May 2022, this waiver should carry forward to the present application thereby satisfying the conditions under section 48.1 and section 55.1 of *the Act*.
13. Section 48.1 of *the Act* states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48".
14. Section 55.1 of *the Act* requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is August 31, 2023.
15. A review of Section 73.1 of *the Act* is instructive in determining how to interpret the status of compensation payments made under Section 48.1;

Section 73.1 (1) states:

73 (1) If the landlord compensated the tenant under section 48.1, 49.1, 52, 54 or 55, as the case may be, in connection with a notice of termination under section 48, 49 or 50 and the Board refuses to grant an application under section 69 for an order terminating the tenancy and evicting the tenant based on the notice, the Board may order that the tenant pay back the compensation to the landlord.

16. The operative language is that the Board "may" order the Tenant pay back the compensation to the Landlord, which also means the Board 'may not' order this amount be returned to the Landlord. Therefore, I find that compensation paid in the past is not necessarily to be considered a debt as there is an opportunity through an established and existing process for the Landlord to have this amount returned. Had the Landlord not submitted the letter to the Tenant stating their intention to apply the previous waived rent from May 2022 to the present application, the Tenant's argument may have held more weight as normally this is an exhaustive process to deal with the return or use of the

previous compensation or waiver of rent owed that was provided to the Tenant as part of the previous application. The Landlord representative's letter however, exhausted the process as to what the Landlord's intentions were with respect to the rent waiver from May 2022 and is therefore a valid application of compensation in this application process.

17. Therefore, I find that the Landlord's letter was unequivocal in its intention that it intended to rely on the past transaction from May 2022 to cover the future transaction that is compulsory as part of Section 48 of *the Act*. The purpose of Section 48 is that "a landlord shall compensate a tenant... if the landlord gives the tenant a notice of termination of the tenancy." In this case, I find the Tenant was compensated by the Landlord before the termination date, the Tenant was informed clearly through the letter dated July 25, 2023 regarding the application of the compensation, and therefore for the above reasons, the compensation was valid.

Good Faith

18. I find that the Landlord in good faith requires possession of the rental unit for the purpose of the Landlord and the Landlord's spouse's residential occupation for a period of at least one year.
19. In *Salter v. Beljinac, 2001*, the Divisional Court held that:

"the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal..."

20. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are "largely irrelevant".

Landlord's Evidence

21. The Landlord testified the subject unit is a 2-bedroom unit with a solarium that provides more than enough space for him, his spouse and their children and testified they intend to live in the unit for a period of at least one year.
22. The Landlord's witness and spouse, Jessica Moon, testified the couple intends to live in the unit for a period of at least one year. Mrs. Moon further testified they currently live in Kansas, United States and intend to move into the unit as they require to care for their elderly parents who live in nearby Brampton and her father has recently undergone two hip replacements, a knee replacement and experienced third degree burns which has limited his mobility.
23. The declarations signed July 4, 2023 by the Landlord Jiwan Moon and his spouse Jessica Moon were entered into evidence and states the Landlord and his spouse intend to occupy the unit for at least one year.

Tenant's Evidence

24. The Tenant's representative alleged that the Landlord was issuing the N12 notice of termination in bad faith as the Landlord has been attempting to evict or pressure the Tenant to move out of the unit for several years that can be substantiated through a pattern of behaviour.
25. The Tenant testified she met with the Landlord and the Landlord's spouse at 4:00 p.m. on December 26, 2019 and at this meeting the Landlord allegedly informed the Tenant they intended to increase the rent and potentially sell the unit in the future. The Tenant further testified that in March 2020 the Landlord informed the Tenant they intended to raise the rent. The Tenant submitted a copy of the correspondence from the Landlord to the Tenant dated January 2020 and March 2020 into evidence substantiating the Tenant's testimony.
26. The Tenant also alleged the alleged rationale for the Landlord moving from Kansas to Scarborough did not make sense claiming it is not a reasonable to travel 45 minutes from Scarborough to Brampton in order to provide care for their aging father and that the Landlord owns multiple properties, including a property in Kitchener, Ontario, and that Kitchener would be a more proximate location in order to provide care if that were the Landlord's true intention for moving. The Tenant's representative testified that no documentary evidence was submitted by the Landlord to substantiate their testimony regarding the Landlord's parent's health or mobility issues.
27. The Tenant further testified that a previous N12 notice of termination was served in March 2023 and the subsequent application was dismissed by the Landlord Tenant Board.
28. The Tenant's representative alleged that the actions of the Landlord represented a pattern of behaviour that amounted a systematic effort to evict or pressure the Tenant from the unit.

Analysis

29. Section 48(1) requires that, in order to be successful in this application, the Landlord has the onus to satisfy me that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.
30. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"), this legal test remains unchanged under the successor legislation (see *Salter*, para. 25 and 26).
31. The subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC) ("Fava").
32. In this case, I have the evidence of the Tenant that alleges the service of a second N12, the undisputed communications from the Landlord to the Tenant about their past intentions to raise the rent and/or sell the unit in addition to the questionable lack of

documentation regarding their lengthy upcoming move from Kansas to Scarborough as their rationale the N12 notice for termination was not served in good faith.

33. In support of the application, I have the evidence of the Landlord. It is undisputed by the Landlord that this is the second N12 served on the Tenant; however, the previous N12 notice of application was not dismissed because it was not served in good faith, it was dismissed because the Landlord has not met the compensation requirements under Section 48 of *the Act*.
34. The Landlord and Landlord's spouse denied the allegations of bad faith maintaining despite the correspondence in December 2019 and March 2020, they did not sell the unit, nor did they increase the rent much less even correspond with the Tenant about selling or increasing the rent from March 2020 through the date of the hearing. There was no evidence, documentary or otherwise, that pointed to a sustained effort, or a recent effort on behalf of the Landlord to increase the rent or sell the unit. Just because the Landlord may have wanted to sell the unit approximately 4 years prior, does not mean the Landlord wants to sell the unit at the time the Landlord issued the N12 notice of termination and therefore this piece of evidence, after considering all of the evidence, in particular the testimony of the Landlord and the Landlord's spouse, does not constitute bad faith alone.
35. I have considered all the evidence and I find that the Landlord proved that it is more likely than not that he in good faith requires the rental unit for the purposes of residential occupation for his own use and his spouse's own use for a period of at least one year. I am persuaded by the testimony of the Landlord and the Landlord's spouse they genuinely intend to occupy the unit for a period of at least one year. I find that the drive from Scarborough to Brampton is reasonable to provide care for their elderly parents. The fact that the Landlord happens to be travelling a long distance to move from their current home in Kansas to the subject unit in Scarborough is not sufficient rationale to infer their motives are not in good faith as described in *Fava*. I am not satisfied based on the Tenant's evidence or description of the matters, alone or in the aggregate, constitute bad faith from the Landlord under the *Act*.

Rent Deposit

36. The Landlord collected a rent deposit of \$1,650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$374.20 is owing to the Tenant for the period from June 14, 2016.
37. 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.
38. Based on the Monthly rent, the daily compensation is \$54.25. This amount is calculated as follows: \$1,650.00 x 12, divided by 365 days.

Relief from Eviction

39. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act. Given

the current rental market conditions in the greater Toronto area the delay will provide the Tenant with additional time to complete a housing search for an affordable and suitable unit without significantly prejudicing the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 30, 2024. The Tenant must move out of the rental unit on or before April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord 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 Landlord on or after May 1, 2024.
4. The Landlord shall apply the rent deposit of \$1,650.00 to the lawful monthly rent due April 1, 2024 which is for the last month of the tenancy. The Landlord shall return the balance of \$374.20 equal to the interest owing, to the Tenant by April 30, 2024.
5. If the Landlord does not pay the Landlord the full amount owing as per paragraph 4 on or before April 30, 2024, the Landlord will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
6. If the unit is not vacated on or before April 30, 2024, the Tenant shall also pay to the Landlords \$54.25 per day for compensation for the use of the unit from May 1, 2024 to the date the Tenant moves out of the unit.

March 25, 2024

Date Issued

Greg Witt

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 1, 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.