



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

Citation: Khan v Kudelya, 2024 ONLTB 10004

Date: 2024-02-07

File Number: LTB-L-054299-23
LTB-L-056735-22

2024 ONLTB 10004 (CanLII)

In the matter of: Unit 1, 47 REDONDO DR THORNHILL
ON L4J7S7

Between: Adil Khan Landlord
Aneela Khan

And

Larisa Kudelya Tenant
Ludmila Kharkuurina

Adil Khan and Aneela Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Larisa Kudelya and Ludmila Kharkuurina (the 'Tenant') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.
- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has wilfully or negligently caused damage to the premises.

Adil Khan and Aneela Khan (the 'Landlord') also applied for an order requiring Larisa Kudelya and Ludmila Kharkuurina (the 'Tenant') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex.

This application was heard by videoconference on October 30, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord's L2 application that is based on the N5 notice of termination is dismissed.
2. The Landlord's application that is based on the N12 notice of termination is granted and the tenancy will terminate April 30, 2024.
3. The Landlord's claim for damages pursuant to the L2 application is dismissed.

L2 Application based on N5 Notice of Termination

4. The Landlord served the Tenant with a 1st N5 notice of termination with a termination date of August 9, 2022. The Landlord then served a second N5 notice of termination with a termination date of October 10, 2022. Both notice that were served on the Tenant contain the same allegations.
5. A Tenant does not have to void the first N5 notice for the Landlord to serve a second N5 notice. The Landlord can either file an L2 within 30 days of the termination date on the first N5 notice or serve a second N5 notice if the Tenant engages in new conduct more than 7days but less than 6 months after the first N5 was served.
6. In this circumstance, the allegations on the second N5 notice are the same as what was alleged on the first notice, in other words, not new conduct.
7. The Landlord cannot rely on the first N5 notice in this case as the L2 application was filed more than 30 days after the termination date on the first N5 notice. Therefore, the portion of the L2 application relating to the N5 notice of termination is dismissed.

L2 Application based on an N12 Notice of Termination

8. On July 5, 2023, the Landlord gave the Tenant an N12 notice of termination with a termination date of September 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
9. A. Khan testified on behalf of the Landlord. She is the Landlord's daughter. She testified that she currently resides in the same house as her parents. She testified that she shares 1 bedroom with her husband and two children, ages 4 and 7 months. She testified that her two brothers and her in-laws also reside at her parents' house. She testified that she

needs space for her family. She testified that her husband's parents came to Canada earlier this year and since then it has been very stressful in the small space.

10. The Tenant did not contest that the Landlord's daughter will move into the unit, she focused more on her assumption that the Landlord's child would not be paying rent to live in the unit. She testified that the Landlord is trying to evict her under any circumstances. She testified that in the summer of 2022, the Landlord had a conversation with her about raising the rent as interest rates keep rising. The Landlord did not raise the rent above the guideline.

Analysis

11. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
12. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.), the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."
13. Based on the evidence before me, on a balance of probabilities, I find that the Landlord, in good faith requires possession of the rental unit for the purpose of his child's residential occupation for a period of at least one year.
14. The Landlord's daughter testified that she currently shares a bedroom with her husband and her two children and that her living situation is stressful and crowded. I found her testimony to be consistent and straightforward and therefore reliable.
15. Although the Tenant believes the Landlord is attempting to evict her by any means and that the Landlord wants more rent for the unit. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether the Landlord's child genuinely intends to move in and I am satisfied that she does.

Compensation for Damages

16. The Landlord testified that when he attended the property, he found that the glass for the sliding glass door was damaged. He alleges that the damage is caused by deliberately hitting the glass door with heavy boxes causing glass to be released or by using strong chemicals. He testified that the glass door appears foggy and stained. The Landlord submitted a picture of the door into evidence. The Landlord testified that the door was replaced in 2014.
17. The Tenant testified that the seal is broken and that she informed the Landlord. She testified that the door is old, and the damage is a result of regular wear and tear, and not the result of her actions. She testified that she does not use strong chemicals nor did she hit the door.
18. The Tenant submitted an email dated October 2021 from a contractor that deals with glass doors. In the email, he states in part, "The reason they get foggy is because what you have in your frames are called thermal units, over the years, the seal behind your frame breaks and it starts receiving oxygen between the pane which causes the fogginess."
19. The Tenant submitted an email dated October 8, 2021 where she notifies the Landlord about the sliding door issue. The Tenant submitted a picture of a label that is on the sliding glass door that is dated September 14, 2007.
20. Based on the evidence before me, I find that the Landlord has not proven, on a balance of probabilities, that the damage to the sliding glass door is the result of the Tenant's actions. I prefer the evidence of the tenant over that of the Landlord. Although the Landlord testified that the glass was replaced in 2014, if that were the case, it seems odd that it would have a label on it that is dated 2007. It makes more sense to me that the issue with the door is as a result of a damaged seal rather than deliberate actions of the Tenant. Therefore, the Landlord's claim for compensation is dismissed.
21. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023.
22. 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.

Relief from eviction

23. The Tenant testified that she lives in the unit with her mother and her daughter. She has lived in the unit for a number of years. She testified that she has strong ties to the community, she grew up in the area.
24. The Tenant testified that she has been looking for other units, however, she is unable to find something that she can afford. The Tenant requested at least a year to vacate the unit.
25. The Landlord requested termination of the tenancy by December 31, 2023.

26. Given the length of time the Tenant has lived in the unit and the challenges with the rental housing market, I find that it is reasonable in the circumstances to delay the eviction until April 30, 2024. I am mindful of the Landlord's request to terminate the tenancy sooner; however, I find that the prejudice faced by the Tenant outweighs any prejudice the Landlord may endure. Although I am sympathetic to the Landlord's daughter's circumstances, she is not at imminent risk of homelessness. The delay in the termination date takes into consideration the delay in issuing this order.
27. 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.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. 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.

February 7, 2024

Date Issued

Emily Robb

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 October 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.

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