



Order under Section 69 Residential Tenancies Act, 2006

Citation: Duza v Brathwaite, 2024 ONLTB 61508

Date: 2024-08-26

File Number: LTB-L-009072-24

In the matter of: 3713 ST CLAIR AVE E
SCARBOROUGH ON M1M1T5

Between: Nasir Ud Duza Landlord

And

Jacqueline Brathwaite Tenant
Lawrence Ciocci

2024 ONLTB 61508 (CanLII)

Nasir Ud Duza (the 'Landlord') applied for an order to terminate the tenancy and evict Jacqueline Brathwaite and Lawrence Ciocci (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.

This application was heard by videoconference on August 13, 2024.

The Landlord Nasir Ud Duza and the Tenant Jacqueline Brathwaite attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. 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. On January 31, 2024, the Landlord served the Tenant with an N12: Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental Unit ('the N12') notice of termination under section 48 of the *Residential Tenancies Act (2006)* (the 'Act'), seeking termination of the tenancy for their child's residential occupation.
2. The Landlord has not compensated the Tenant an amount equal to one month's rent and the termination date has passed. As a result, the Landlord's application must be dismissed.
3. Pursuant to section 48.1 of the Act, the landlord must compensate the tenant an amount equal to one month of rent if the landlord serves an N12 notice for the landlord's own use.
4. Additionally, section 55.1 of the Act states:

If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50. [emphasis added]

5. The termination date set out in the N12 Notice is March 31, 2024. Pursuant to section 55.1, the compensation had to be paid by that date.
6. Finally, Section 83(4) of the Act states that the LTB cannot issue an eviction order if the landlord has not complied with the compensation requirement under section 48.1 of the Act.
7. Section 48.1 does not require a landlord to pay the tenant directly; a landlord can provide the required compensation by waiving rent for a period before the termination date. However, in my view, a tenant is only 'compensated' by a waiver of rent when the landlord clearly and unequivocally advises the tenant that the rent is waived for a specific period prior to the termination date on the N12 notice.
8. The Landlord testified that instead of making a direct payment to the Tenant, he agreed to deduct the compensation from the Tenant's rent arrears. He also testified that on April 2, 2024, he served the Tenant an N4 notice of termination, claiming rent owing for February, March, and April 2024.
9. The Landlord testified that he sent a letter to the Tenant confirming the deduction of the compensation from the arrears. The Landlord presented a Request to Shorten Time filed with the Board, which he claims is the letter to the Tenant regarding the compensation. The Request to Shorten Time states:

Tenants current rent only balance right now is \$13050.00. I already served her a separate N4 notice and going to file separate application to the board. Will request to the LTB to combine both application.

10. The Request to Shorten Time does not state that the Landlord will waive a specific month of rent or deduct the compensation from the arrears. Although this document was sent to the Tenant, it is not a communication directed at them. The Tenant denied receiving the compensation or any communication from the Landlord regarding it.
11. In this case, the Landlord did not clearly communicate to the Tenant that a specific month's rent was waived. The Landlord claimed the months prior to the termination date on the N12 Notice as owing in the N4 notice, further confirming that they were not waived. Therefore, I find that the Landlord did not compensate the Tenant as required by section 48.1 of the Act. As a result, section 83(4) of the Act applies, and I cannot issue an eviction order based on this application.

It is ordered that:

1. The Landlord's application is dismissed.

August 26, 2024
Date Issued

Kate Sinipostolova
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.