



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

**Citation:** Valladares v Clark, 2024 ONLTB 61045

**Date:** 2024-08-21

**File Number:** LTB-L-038805-24

**In the matter of:** 25 Mohegan Crescent  
London Ontario N5V2X7

**Between:** Jose Valladares Landlord

**And**

Donald Clark Tenant  
Dana Gill

Jose Valladares (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Clark and Dana Gill (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 12, 2024.

The Landlord and the Tenants and the Tenant's representative Micheal Joudrey attended the hearing. Kevin Valladares and Fanni Yanet Valladares attended the hearing as a witness for the Landlord.

**It is determined that:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy **and** the claim for compensation in the application. Therefore, the tenancy is terminated and the Tenants must vacate by December 3, 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The rental unit is an attached three-bedroom townhouse.
4. On April 30, 2024, the Landlord gave the Tenants an N12 notice of termination with the termination date of August 14, 2024 seeking termination of the tenancy for the purpose of residential occupation by the Landlord's son.

*Preliminary Issue: Previous N12s not disclosed.*

5. The Tenant raised the issue that the Landlord did not disclose all previous N12 Notices, by improperly identifying the October 11, 2023 N12 notice and not disclosing the September 1, 2023 N12 notice in the Landlord's application. Both of these notices had been served on

the Tenant. The Tenant submits the application is therefore deficient and should be dismissed.

6. Section 71.1(3) of the *Residential Tenancies Act 2006* (the “Act”) requires the Landlord to disclose in their application all previous N12 or N13 notices related to any rental unit owned by the Landlord in the past two years. Without that disclosure section 71.1(4) states that the Board shall refuse the application for filing if the Landlord does not comply.
7. A similar issue was recently raised in application TNL-36369-21. Vice-Chair Ian Speers addressed the purpose of Section 71.1(3) of the Act as follows:

*...the apparent intention of this statutory amendment is to allow both tenants and the Board to observe a pattern in a landlord’s conduct of using N12 and N13 notices, I believe that the disclosure of all N12 and N13 notices, valid or not, is the legislative intent of the provision. This legislative intent is underscored by the contemporaneous proclamation of subsection 72(3) of the Act, which expressly contemplates that “the Board may consider any evidence the Board considers relevant that relates to the landlord’s or purchaser’s previous use of notices of termination under section 48, 49 or 50.”*

...

*The Act does not provide a clear consequence for a landlord’s failure to meet their disclosure obligation under subsection 71.1(3). Subsection 71.1(4) ... does not expressly address what happens when the Landlord has completed the appropriate section of the application but has omitted one or more N12 or N13 notices.*

8. Vice Chair Speers in TNL-36369-21 found that while in certain circumstances, dismissal of the application might be the appropriate result for non-compliance with subsection 71.1(3), where a tenant had actual notice of the previous N12 notices, the tenant is not prejudiced in their ability to investigate any patterns in the Landlord’s use of N12 or N13 notices of termination, nor are they prejudiced in their ability to bring any such findings before the Board should they wish to argue, under subsection 72(3) of the Act, that the pattern undermines the professed good faith of the notice of termination.
9. While not binding on me, TNL-36369-21 provides a persuasive framework for interpreting subsections 71.1(3) and (4).
10. In the present case the Tenants’ evidence is that they had copies of these two N12 notices in their files since they were served both notices for their rental unit. They were fully aware of their contents. The Landlord’s evidence he discussed the September 1, 2024 notice with Mr. Clark in September, who identified an error on the notice. Due to procedural errors, both N12 notices had to be abandoned.
11. In the circumstances of this application the Tenant was aware of both N12s well before the hearing. The Tenant was not prejudiced in their ability to investigate patterns in the Landlord’s use of N12 notices. The Tenants came to the hearing prepared to argue their case, and to bring those notices to the Board’s attention in order to determine bad faith in accordance with subsection 72(3).

12. As a result, I find the Landlord has complied with their obligations under section 71.1 and pursuant to section 200(1)(f) the Board amends the application to include the second September 1, 2024 notice.

Preliminary Issue: Notice Validity

13. The Tenant submitted that the N12 Notice of termination contained the incorrect date of termination because the beginning of each rental period is not the 15<sup>th</sup> of the month but the 1<sup>st</sup> of each month.
14. Section 13(1) of the Act states that the term or period of a tenancy begins on the day the tenant is entitled to occupy the rental unit under the tenancy agreement.
15. In the case of a monthly tenancy, section 48(2) of the Act requires the date of termination in an N12 notice to be the day a period of the tenancy ends.
16. The tenancy agreement states the term begins on June 1, 2013. However, the parties agree the Tenant moved into the rental unit on the 15<sup>th</sup> of May 2013. The parties also agree that the Tenant began paying rent on the 15<sup>th</sup> of each month and has done so ever since. The parties agree that they signed the Tenancy agreement on the 13<sup>th</sup> of the May 2013.
17. A Notice of Rent Increase (NORI) was served on the Tenants in February of 2023. That NORI states rent is to increase effective the first of April, 2023. The Tenant's rely on this document to state that despite when they moved in, each rental period begins on the first of the month. The Tenant's testified they were not confused by the NORI and were certain they still paid rent on the 15<sup>th</sup> of each month.
18. Applying section 13(1) of the Act it is clear that this tenancy began on the 15<sup>th</sup> of the month. There is no dispute the parties have treated the monthly tenancy period as beginning on the 15<sup>th</sup> of each month and ending on the 14<sup>th</sup> of each following month.
19. Accordingly, I find the N12 notice of termination is valid.

Good Faith

20. The N12 notice was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 Notice, the Landlord's son required in good faith, the rental unit for residential use for a period of at least one year.
21. 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.
22. The Landlord's son, Kevin Valladares, signed a declaration that was submitted to the Board confirming he intends, in good faith to occupy the rental unit for a period of at least

one year. In oral testimony, he indicated that he is 30 years old, is single and lives with his parents. The tenant testified he returned home from University in Alberta at the start of the pandemic in 2020. He now wants to take the burden of being a Landlord off his parents, but he also wants to take on more tenants and rent to more people at some point. He would move into the rental unit and rent rooms to people. In 5-10 years, he might convert the basement to an apartment. He may even rent it as an Airbnb. He does not work, and due to an accident in his youth and a monthly payment, he does not need to work. Despite that he said the extra income would be nice. The Tenant testified he understood he is required to live there for at least one year and plans to for much longer than one year.

23. The Tenant's representative asked no questions of the Landlord or his son, except to ask the Landlord if a city garbage complaint had been resolved. The Tenant did not dispute the Landlord's testimony or provide contradictory evidence of any kind.
24. The Tenant's representative submitted that the Tenant has not met the test under section 48 of the Act because the son wants to rent out rooms, which is not consistent with residential use. Despite those submissions the Tenant did not provide any evidence that the Landlord's son won't move into the rental unit.
25. I found the Landlord's son to be forthright and credible in his testimony. He did not hide his intended use of the property and I believe him when he says he wants to move into the rental unit. I do not consider that the possible future presence of roommates, the future creation of a basement apartment and possible rental of that apartment inconsistent with residential occupation by the Landlord's son. Roommates do not undermine the son's good faith intention to use the rental unit for his own residential occupation. He will still occupy the rental unit as his primary residence. There was no evidence that he would not live there while renting bedrooms. The evidence that he might make a basement apartment clearly referred to sometime after the 1<sup>st</sup> year, which is not inconsistent with section 48 of the Act.
26. I therefore find that the Landlord has proven on a balance of probabilities that he in good faith, requires the rental unit for his son's residential occupation for a period of at least one year.

### Compensation

27. Section 48.1 of the Act requires a landlord who has served an N12 notice to give the tenant compensation in the amount of one month of rent.
28. Section 55.1 of the Act requires a landlord who is obligated to give compensation to a tenant under s.48.1 to pay that compensation no later than the termination date in the N12 notice.
29. As of the date of the hearing the Landlord has not paid compensation to the Tenant. The Landlord must pay compensation equal to one month's rent on or before August 14, 2024.

Daily compensation and rent deposit.

30. At the hearing the Landlord confirmed that they wanted to claim daily compensation but did not select that box in the Application. After determining it would not be unfair to the parties, pursuant to section 201(1)(f) of the Act the application was amended by the Board to include the claim for daily compensation.
31. Based on the monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
32. The Landlord collected a rent deposit of \$850.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$157.51 is owing to the Tenants for the period from May 13, 2013 to August 12, 2024.
33. 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

34. 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 November 30, 2024 pursuant to subsection 83(1)(b) of the Act.
35. The Tenants noted that they have been searching extensively for a new rental unit but with some difficulty. They have seen numerous other rental units. The tenancy began 11 years ago, and with increases, they submit market rent is unaffordable. The Tenants have begun packing as well.
36. Ms. Gill and Mr. Clark testified as to their incomes. Ms. Gill is employed and Mr. Clark is retired. Their combined incomes are sufficient to meet their needs. Mr. Clarke was diagnosed with cancer in June of 2023 and has residual effects from the treatment. He does not have the strength he used to. Due to the financial obstacles to finding a new rental unit in their price range and the time to pack, they suggested they may need 3-4 months to find a new place.
37. The Landlord did not oppose a delayed termination date and testified he would 'respect my decision. He provided no evidence of prejudice if eviction were delayed by the Board.
38. Have regard to the Landlord's lack of opposition and prejudice, I accept the Tenant's requested termination delay.

**It is ordered that:**

1. As soon as possible, but no later than August 14, 2024, the Landlord shall pay to the Tenants \$1,100.00, which is one months' rent, in compensation as required by the Act.
2. On condition that the landlord complies with paragraph 1, the tenancy between the Landlord and the Tenants is terminated and the Tenants must move out of the rental unit on or before November 30, 2024.

3. If the unit is not vacated on or before November 30, 2024, then starting December 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 December 1, 2024.
5. The Tenant shall pay the Landlord compensation of \$36.16 per day for the use of the unit starting August 15, 2024 until the date the Tenant moves out of the unit. Any rent payment made by the Tenant for the period after August 14, 2024 must be applied to this amount.
6. The Landlord owes \$1,007.51 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from any amount owing by the Tenant.
7. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$1,007.51.
8. If the Landlord does not pay the Tenants the full amount owing on or before September 1, 2024, the Landlord will start to owe interest. This will be simple interest calculated from September 2, 2024 at 7.00% annually on the balance outstanding.

**August 21, 2024**  
**Date Issued**

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Julie Broderick  
Member, Landlord and Tenants 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 Tenants expires on June 1, 2025 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.