



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

Citation: Zia v Meydaner, 2024 ONLTB 5955

Date: 2024-03-22

File Number: LTB-L-012109-23

In the matter of: 702, 223 Webb Drive
Mississauga Ontario L5B0E8

Between:

Rukhsana Zia Landlord

Hulya Meydaner
Selim Hakan Meydaner
And

Tenants

Rukhsana Zia (the 'Landlord') applied for an order to terminate the tenancy and evict Hulya Meydaner and Selim Hakan Meydaner (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.

This application was heard by videoconference on January 9, 2024.

The Landlord, Landlord's Legal Representative, Apurva Dylan Shah, Tenant, Hulya Meydaner, and the Tenant's Legal Representative, Onar Balyurek, attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On September 27, 2022 the Landlord served the Tenants an N12 Notice of Termination with a termination date of November 30, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
4. The Landlord compensated the Tenants an amount equal to one month's rent on November 1, 2022.

Good Faith

5. The N12 was served pursuant to s. 48 of the *Residential Tenancies Act, 2006* (the 'Act'). In order to be successful in this application, the Landlord must establish that she, in good faith, requires the unit for her residential use.
6. 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.
7. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 the Divisional 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.

Landlord's Evidence

8. The Landlord testified that she is currently living with a friend in their house in Mississauga. She assists this friend with home related expenses. However, this is a temporary arrangement, and it is anticipated that she will move out of this house in the near term.
9. The Landlord stated that she works for a Mississauga-based real estate firm and is currently single. Her son works in Dubai and occasionally comes back to visit Canada. He has a residential unit here which he has rented out. When he visits Canada, he stays in this unit's den.
10. Pursuant to section 72(1)(a) of the Act, the Landlord provided a signed declaration dated October 16, 2023 declaring her good faith intention to reside in the rental unit for her own personal use for a period of at least one year. The Landlord testified that she is now facing

financial hardship and unable to rent a unit to live in. As such, she requires the possession of this rental unit for her own use.

11. The Landlords' Legal Representative declared that pursuant to section 71.1(3) of the Act, there has been two previous N12 notices served to the Tenants. There was an N12 notice served on February 1, 2022 which was deemed invalid by the Board as the compensation equivalent to one month's rent had not been provided to the Tenants prior to the notice's termination date, in accordance with section 48.1 of the Act. Prior to this, an N12 notice was served to the Tenants on December 1, 2021. The Landlord testified that she subsequently withdrew this N12 notice after learning about the Tenant's financial circumstances.
12. The Landlord stated that she does not own any other properties. She further explained that she purchased the unit May 23, 2013. She asserts that this unit is within commuting distance to her work and that by moving back into this unit will alleviate financial pressures for her.
13. The Landlord's Legal Representative submitted that the Tenants' allegations of illegal rent increases were not substantiated and is a separate issue which does not dispel Landlord's good faith requirement for possession of the rental unit.

Tenant's Evidence

14. The Tenant Hulya Meydaner testified that she believes the Landlord's application to evict the Tenants is not being made in good faith because:
 - a) The Landlord withdrew the first N12 notice they served in December 1, 2020 because the Tenants had agreed to pay an above guideline rent increase, which was contrary to the Act;
 - b) The Tenant asserts that the most recent N12 notice has been served as the Tenants will not pay any further rent increases;
 - c) The Tenant stated that these rent increases were primarily done through verbal agreement but she did have bank transaction records to support her claims; and
 - d) The Tenant testified that she has not previously raised issues regarding the Landlord's actions as she was a recent immigrant and was not aware of residential tenancy laws at the time.

Analysis

15. On the basis of the evidence provided, I am not satisfied that the Landlord genuinely requires the unit in good faith. The Tenant provided evidence, supported by banking records, establishing several bank transactions that were made from 2017 to 2021, and which appear to be rental payments. The Tenant also submitted a letter, dated December 28, 2020, which requests the Tenants vacate the unit by February 28, 2021 as the Landlord

intended to move back into the unit. This letter's request is consistent with that of an N12 notice but is not on a Board approved form. The Tenant's testimony on a series of rent increases over a 5-year period is to establish that the previous N12 served, and subsequently withdrawn, in December 2021 is due to her agreeing to pay an additional illegal rent increase. This is supported by the Tenant's submitted bank records which shows a pattern of successive rent increases from 2017 to 2021.

16. The Landlord did not have a satisfactory response to the Tenants' claims regarding the illegal rent increases. Moreover, the Landlord did not include the "N12 letter" in their L2 application and the Landlord did not raise it at the hearing.
17. I accept the Tenants evidence that in or around December 2021, the Landlord served them with an N12 but agreed to not proceed with it after the Tenants agreed to an unlawful rent increase. I do not accept the Landlord's evidence on this point. Ultimately, I did not find the Landlord to be a credible witness. I do not accept their evidence denying that they requested an unlawful rent increase, and I find it curious they did not file the "N12 letter" with their application. Having found the Landlord's evidence to be non-credible, I am not satisfied on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purposes of residential occupation.
18. Even if I had found that the Landlord had a good faith intention to move into the rental unit for at least one year, I would have denied the application on the basis of section 83. In my view, denying eviction would not be unfair in the circumstances, particularly given that the Landlord withdrew a previous N12 after the Tenants agreed to an unlawful rent increase.
19. Based on the evidence presented, I am unable to find on a balance of probabilities the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation and the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.
2. On or before April 21, 2024, the Tenants shall pay to the Landlord \$1,850.00, which is the amount the Landlord paid in compensation to the Tenants.
3. If the Tenants do not pay the Landlord the full amount owing by April 21, 2024 they will owe interest. This will be simple interest calculated from April 22, 2024 at 7.00% annually on the balance outstanding.

March 22, 2024

Date Issued

Justin Leung
Member, Landlord and Tenant Board

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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.

2024 ONLTB 5955 (CanLII)