



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

**Citation:** Chowdhury v Dash, 2024 ONLTB 20815

**Date:** 2024-08-15

**File Number:** LTB-L-035167-22

**In the matter of:** 105 BYNG AVE.  
OSHAWA ON L1G3N2

**Between:** Md Sayem Bakhht Chowdhury Landlords  
Fatema Khatun

**And**

Richard P Dash Tenant

Md Sayem Bakhht Chowdhury and Fatema Khatun (the 'Landlords') applied for an order to terminate the tenancy and evict Richard P Dash (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 Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 14, 2024.

The Landlord, Mr. Chowdhury, and the Landlord's Representative, Thirusenthuran Sivapatham, attended the hearing. The Tenant attended the hearing.

*Preliminary Issue: Request for Adjournment.*

1. The Tenant requested an adjournment at the outset of the hearing to seek legal representation. The Tenant stated that he contacted the Landlord and Tenant Board last week to get representation. He stated that the Board told him no one was available on the hearing date to represent him.
2. Although Tenant Duty Counsel may be available to tenants who attend an LTB hearing, there is no absolute right to representation and the Board does not provide parties with legal representation.
3. This matter was originally scheduled to proceed on February 23, 2023, and at that time, the Tenant requested an adjournment for the same reason that he requested an adjournment at this hearing – to seek legal counsel to represent him in this application. The Member granted the Tenant's request for an adjournment on February 23, 2023, peremptory on the Tenant.

4. The Landlord's Representative spoke about the prejudice that a further adjournment would cause to the Landlord. The Landlord is currently leasing a property for him and his family. The Landlord is eager to move to the rental unit, and intends to live there indefinitely. The Landlord served the N12 in April of 2022. It is almost two years since the notice was served.
5. At the hearing I denied the Tenant's request for an adjournment because this matter was previously adjourned at the Tenant's request to allow him to seek legal representation and was peremptory on the Tenant. I also considered the prejudice on both parties should I grant or deny the adjournment. The Tenant has had ample time to retain legal representation --- it is over a year since the first hearing (adjourned). Further delaying this matter is prejudicial to the Landlord.

**Determinations:**

6. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy between the Landlord and Tenant is terminated. However, in considering the circumstances of the Tenant, I have ordered a delayed eviction to October 31, 2024.
7. The Tenant was in possession of the rental unit on the date the application was filed.
8. On April 19, 2022, the Landlords gave the Tenant an N12 notice of termination, with a deemed service date of April 24, 2022. The termination date on the N12 was June 30, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords and their child.
9. The Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
10. Mr. Chowdhury told the Board that the Landlords purchased the rental property to live in indefinitely. The Landlords served the N12, and provided the Tenant with one-month's compensation in accordance with Section 48 of the *Residential Tenancies Act, 2006* ('Act'). This was done by crediting May, 2022's rent.
11. Mr. Chowdhury presented a text exchange between him and the Tenant. In that exchange on May 6<sup>th</sup> and 7<sup>th</sup>, 2022, Mr. Chowdhury requests rent from the Tenant for May of 2022, and in response, the Tenant tells the Landlord that "... since your [sic] evicting me , you must give me 2 months rent back so this is the second month you owe me ! Check it out it's all legal!"
12. Mr. Chowdhury stated that shortly after serving the N12, the Tenant began to raise maintenance issues at the rental unit but each time the Landlords attempted to address those issues, the Tenant denied him (or his trades, or the City By-Law Officer) access to the rental unit. Mr. Chowdhury pointed to a text sent by the Tenant on February 20, 2023, as evidence that the Tenant was raising maintenance issues in reaction to the Landlords serving the N12 and proceeding with the application. In that text message, the Tenant writes:

*"I'm willing to not ask for repairs if you stop trying to evict me ?"*

13. Mr. Chowdhury presented emails from the City By-Law Officer, Diance Kluczyniski, dated August 28, 2023 and December 20, 2023. In those emails, Ms. Kluczyniski suggests that the Tenant did not let her in and/or was unresponsive after the complaints were made.
14. The Tenant stated that he does not believe the Landlords want to move into the rental property. He believes that if the Landlords wanted to move to the rental property, the Landlords would have offered the Tenant the basement unit. Mr. Chowdhury responded by saying that, although the basement is currently tenanted, the Landlords intend to move their into the basement once they get possession of the property.
15. Mr. Chowdhury denied the Tenant's allegation that his family did not intend to move to the rental property. In addition to the Affidavit sworn on May 19, 2023, Mr. Chowdhury told the Board that the Landlords purchased the property to move into, but it was tenanted by the Tenant at the time of purchase.
16. I find Mr. Chowdhury's oral statements credible. I accept the statements made in the Affidavit sworn on May 19, 2023, to mean that Mr. Chowdhury and his family will be moving into the rental until upon vacant possession and will remain there for at least a year.
17. The Tenant raised the following two issues about the validity of the N12 and the Landlords' application: (a) the N12 lacks a unit number, and the Tenant states that his unit is "Main Floor"; and (b) the original declaration filed with the Board does not comply with the requirements under section 72 of the *Residential Tenancies Act, 2006* ('Act').

*(a) N12 Lacks a Unit Number*

18. The Tenant told the Board that the rental address of 105 Byng Ave., Oshawa, ON, is not the correct address for his rental unit. He stated that his rental address is "Main Floor", since there is a basement unit at 105 Byng Ave. He stated that he did not have a lease agreement to show the Board where the address is listed as "Main Floor." I asked the Tenant about his mail and whether or not it stated "Main Floor" or simply just 105 Byng Ave.
19. The Tenant stated that the basement unit is a separate rental unit, with its own entrance.
20. Originally the Tenant stated that his mail just referenced 105 Byng Ave., but then later said that some of his mail stated "Main Floor" before the address. The Tenant did not file any information with the Board nor present any information at the hearing to show that his rental unit is designated as "Main Floor." The Tenant stated that the City of Oshawa by-law office considers the rental unit as "Main Floor."
21. Mr. Chowdhury stated that the rental unit is not designated as "Main Floor." Rather, the Landlords have always referred to the Tenant's rental unit as 105 Byng Ave., without any reference to a unit number. In the Landlords' material filed with the Board, there are three screen grabs of complaints made by the Tenant to the City of Oshawa. In two of the three, the City of Oshawa recorded the Tenant's complaint without reference to a unit "Main Floor."

22. I asked the Landlord about the one of the City of Ottawa recorded complaints that refers to the rental unit as the “Main Floor,” and the Landlord stated that it was the Tenant’s report to the City, and the Landlord was not involved registering that report. The Landlord submitted that this unit – the upper floor of the rental property – is just referred to as 105 Byng Ave., and the basement unit would be “Basement.”
23. In raising the issue, the onus was on the Tenant to satisfy the Board that his rental unit was referred to as “Main Floor” and not just “105 Byng Ave.” As mentioned at the hearing, the Tenant could have done so by presenting mail or other documentation, such as a lease, to show that the rental unit was, in fact “Main Floor.” The Tenant has been living at the rental unit for approximately sixteen years. If the rental unit was, in fact, designated as “Main Floor,” there must be something the Tenant could have presented to satisfy the Board of this. I find the Tenant’s position on this matter self-serving and an attempt to invalidate and otherwise valid N12.
24. In any event, even if I were to accept the Tenant’s proposition, on a purposive interpretation of s.43 of the Act, I find there are sufficient particulars on the notice. Section 43 requires the Act identify the unit for which the notice is given. In *Ball v. Metro Capital 2002 CarswellOnt 8691*, the Divisional Court held that the purpose for requiring reasons in a notice for the Tenant to:
- “1) be in a position to know the case that must be met;
  - 2) to decide whether to dispute the allegations made against her before the Tribunal;
  - 3) to stop the conduct or activity or correct the omission within seven days and thereby void the notice.” [para 10]
25. The Tenant in this case showed up to the hearing and expressed no confusion about which unit the notice related to. The purposes for which the notice was served were met in this case.
26. Therefore, I find that the N12 contains the appropriate residential address.

*(b) Section 72 - Declaration*

27. On the hearing date, there were two declarations before me – one that was originally filed along with the Application on July 2, 2022 (the “First Declaration”); and the second was an affidavit signed on May 19, 2023 (the “Second Declaration”).
28. Despite the Landlords’ Representative’s assertions to the contrary, the First Declaration does not contain the information required under section 72 of the Act. In summary, the First Declaration states that the Landlords served an N12 with a termination date of June 30, 2022. It does not state that the Landlords intend to move into the rental property and remain there for a period of at least one year.
29. The Second Declaration complies with the requirements under section 72 of the Act. The Tenant does not dispute this. He only raises that the First Declaration filed invalidates the entire application because it did not comply with section 72 of the Act. The Tenant

asserted that this error is fatal to the Application, and could not be corrected by the Landlords when they filed the Second Declaration.

30. The Landlord's Representative stated that the Second Declaration is in compliance with section 72 of the Act, and, therefore, the Landlord is not precluded from proceeding with the Application.
31. I agree with the Landlord's Representative.
32. In this case, the Board has a valid declaration – the Second Declaration. Section 72 of the Act requires that the Landlord provide an affidavit attesting to their intention to move into the rental unit and remain there for a year. This is exactly what the Landlord has submitted. The First Declaration did not state that the Landlord had an intention to move into the rental unit and remain for a year; however, the Second Declaration, building on the first, provided this information.
33. Mr. Chowdhury sought a termination of the tenancy as soon as possible. He told the Board that he is facing financial hardships by having to pay both the mortgage on the rental property and his own rent while he waited for a hearing. He told the Board that his rent is \$2,200.00 and the mortgage on the rental property is \$3,300.00. He pointed out that only \$1,475.00 is being paid by the Tenant. Mr. Chowdhury showed the Board his credit card and line of credit statements, all of which appear to be maxed out. It is unclear how this is related to Mr. Chowdhury paying rent and also the mortgage.
34. The Tenant denied the truthfulness of Mr. Chowdhury's allegations that the tenancy is causing the Landlords to face financial hardship. The Tenant said that Mr. Chowdhury receives rent from both him and the basement tenants, the total of which either is equal to or exceeds Mr. Chowdhury's mortgage payment.
35. The Tenant told the Board that he has been living in the rental unit for approximately sixteen years and has accumulated a lot of items. He said that moving will be very difficult for him because he is in his 70s and has suffered physical injuries that make it difficult for him to move around freely without paid. The Tenant mentioned that he also does not have the financial means to move, which includes both the expense of moving along with the increased cost of rent.
36. I accept that this move will be difficult for the Tenant. I accept his submission that he will be required to rely on social support systems, including the church, to help him with this move.
37. The Tenant is asking for a six month delayed eviction. The Landlords have opposed this, given that the Tenant has known for almost two years now that the Landlords require possession of the rental unit and could have used the time in order to make arrangements to move. The Landlords submit that this tenancy should terminate on April 30, 2024.
38. I have considered the Tenant's request along with the Landlords' submissions. I agree that six months is a long period of time; however, I also do not believe that April 30, 2024 is reasonable given the Tenant's circumstances.
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 October 31, 2024 pursuant to subsection 83(1)(b) of the Act.

This will allow the Tenant time to locate a new rental unit and source assistance to help him with the move.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated on October 31, 2024. The Tenant must vacate the rental unit on or before that date.
2. If the Tenant does not vacate the rental unit on or before October 31, 2024, then starting November 1, 2024, the Landlords 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 rental unit to the Landlord on or after November 1, 2024.
4. The Tenant shall also pay the Landlord compensation of \$48.40 per day for use of the unit starting November 1, 2024 until the date the Tenant moves out of the rental unit.

**August 15, 2024**  
**Date Issued**

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Julia Toso  
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 9, 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.

