

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

**Citation:** Jiang v Friedberg, 2024 ONLTB 36903

**Date:** 2024-05-15

**File Number:** LTB-L-041035-23

**In the matter of:** 205, 105 VICTORIA ST  
Toronto ON M5C3B4

**Between:** Li Jiang Landlord

**And**

Kyle Eric Friedberg Tenant

Li Jiang (the 'Landlord') applied for an order to terminate the tenancy and evict Kyle Eric Friedberg (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 19, 2024.

The Landlord, the Landlord's legal representative, Hong Yun Zhang, the Tenant, the Tenant's legal representatives, Leon Presner and Sara Mathew, attended the hearing.

The Landlord called her son, Xianbo Ma ("XM"), as a witness.

The Landlord had an interpreter, Lillian Zhao, attend the hearing as well.

**Determinations:**

*Preliminary Issue- Audio Recording*

1. The Landlord's legal representative raised a preliminary issue of whether an audio recording of a conversation between the Landlord, the Landlord's friends and the Tenant should be permitted into evidence. The conversation that was recorded was a conversation that happened in the unit and was with the Tenant. The Landlord's position was that because the majority of the conversation was not in English, it was meant to be private, and the Tenant was not part of it.
2. However, the Landlord's friends that were present during the conversation were there to assist in translation to the Tenant and the Landlord. What they didn't know was that the Tenant was recording the conversation which was then later transcribed and translated for the purpose of submitting it into evidence at this hearing.

3. The Landlord's legal representative relied on section 184 of the *Canadian Criminal Code*. For the sake of completeness of this decision, section 184 of the *Criminal Code (R.S.C., 1985, c. C-46)* deals with the intentional interception of private communications, whether they be "electromagnetic, acoustic, mechanical or other device" communications. The audio produced at the hearing was not an intercepted communication and so the Landlord's reliance on this section has no basis.
4. I allowed the audio recording to be relied on at the hearing. My reasoning for this was that section 15 of the *Statutory Power Procedures Act, 1990* specifies that a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court, any document or other thing relevant to the subject matter of the proceeding and may act on such evidence.

### *N12 Notice*

5. For reasons that follow, the Landlord's application shall be dismissed.
6. On April 25, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date being June 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child, XM.
7. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
  - (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by, ...
    - (c) a child or parent of the landlord or the landlord's spouse;...
  - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
8. The issue to be determined on this application is whether the Landlord has satisfied the "good faith" requirement in s.48(1) of the Act.
9. The Landlord has paid the Tenant one month of rent in compensation as required by s.48.1 of the Act.
10. At the hearing the Landlord testified that she wishes for her child to move into the unit of the 1-bedroom condo. She testified that her child was living in Scarborough and was working in Toronto at the time of service of the N12. The affidavit of XM states that as of May 22, 2023, her son was in school at the University of Toronto. The Landlord further testified that her son's current rent was too expensive at his condo in Scarborough, and he needed to move into the unit to save her money as she pays for his monthly rent.
11. On cross examination, the Landlord's son essentially contradicted the Landlord's entire testimony. XM was not living in Scarborough during the time frame the Landlord testified to. XM was not paying the rent amount at his Scarborough condo that the Landlord testified to. XM was not working during the time frames that the Landlord testified to. XM is not even currently enrolled in school as stated on the affidavit filed by the Landlord.

12. Additionally, an affidavit sworn by the XM's father that was submitted into evidence by the Tenant, states that the XM has lived with his father since 2013 which is different than the timelines given by the Landlord and XM. This affidavit accompanied an earlier N12 that was served on January 27, 2023.
13. The Tenant submitted that the Landlord does not intend, in good faith, for her child to occupy the rental unit for a period of at least one year.
14. On January 15, 2023 the Landlord attended the unit for a "maintenance inspection" and spoke with the Tenant. The Landlord's friends also attended to assist with translation.
15. The Landlord's purpose for the visit was to tell the Tenant that she intends to build a wall separating the bedroom in the unit and having either a friend or relative move in so she can reduce her financial burden.
16. As mentioned above, the conversation that took place on that day was recorded and within the recording, the Landlord's true intentions were shown. The most relevant parts of this recording are the parts in which the Landlord and her friends spoke to each other in Chinese. At the hearing the Tenant submitted transcripts of these conversations, which was a translation from Chinese to English. Over an hour was spent going through the transcript and the Landlord did not deny any of its contents.
17. For clarity, "Man 1" is the male friend of the Landlord and "Woman 1" is the female friend of the Landlord. "Woman 2" is the Landlord and "Man 2" is the Tenant. The following is a quotation from the transcript:

00:00:37	00:00:52	<p>[Woman 1]: That's it anyway.</p> <p>[Woman 2]: [inaudible]</p> <p>[Woman 1]: So what should I tell him?</p> <p>[Man 1]: Just say that the landlord wants to partition the living room.</p>
00:00:53	00:01:01	<p>[Man 1]: Then see if he agrees. If he agrees, it's OK. If not, I'll use N12.</p> <p>[Woman 1]: You say, I'll translate for you.</p>

		<p>[Woman 1]: So you work from home?</p> <p>[Man 2]: Yeah.</p> <p>[Woman 1]: Nice. And you can enjoy life at home.</p>
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00:01:26	00:01:36	<p>[Man 2]: Sometimes. There's a lot of stuff to be done. So...</p> <p>[Man 1]: [In Chinese] Just a partition here.</p> <p>[Woman 2]: Yes. My thought is...</p> <p>[Man 1]: Make one partition here for two bedrooms.</p>
00:01:36	00:01:46	<p>[Woman 2]: I'm thinking...</p> <p>[Woman 1]: What do I say?</p> <p>[Woman 2]: Tell him that...</p> <p>[Man 1]: You say that I want to separate the living room and rent out an extra room to reduce my stress.</p>
00:01:47	00:01:56	<p>[Woman 2]: Tell him that our child is working.</p>
00:01:57	00:02:07	<p>[Woman 2]: Then the monthly rent is about \$2,900. We feel a lot of pressure. Ask him what he thinks...</p> <p>[Man 1]: He won't care.</p> <p>[Woman 1]: He won't care.</p>
00:02:08	00:02:18	<p>[Man 1]: Yes, you just say that in order to reduce my rent pressure, I want to separate this...</p> <p>[Woman 1]: And let your son live in it.</p> <p>[Woman 2]: Say a family member, don't say my son.</p> <p>[Woman 1]: Arrange your words in Chinese first.</p>
00:02:19	00:02:29	<p>[Woman 1]: [In English] Arrange your words in Chinese first. Let them discuss, then I will translate. Now they are talking.</p> <p>[Man 1]: [In Chinese] Because the current rent...</p>
00:02:30	00:02:40	<p>[Man 1]: Because it costs \$3,000 for my family member to rent an apartment here right now. \$2900, almost \$3000. So I have this consideration now. Because I also took out a loan, I was under pressure.</p>
00:02:41	00:02:50	<p>[Man 1]: So I need to...</p> <p>[Woman 1]: He has found a job here, but renting elsewhere was very expensive. You want to cut it off now.</p>

00:02:51	00:03:00	<p>[Woman 1]: Then don't talk about my family member or anything else. You just want to rent it out again to share some of the stress.</p> <p>[Woman 2]: Sure.</p> <p>[Man 1]: Because the rent of this apartment is now \$3,000.</p>
00:03:01	00:03:10	<p>[Man 1]: The rent is around \$3,000 here.</p> <p>[Woman 1]: The rent for this apartment is about \$3,000?</p> <p>[Woman 2]: No, just say that our child is renting another apartment for about \$3,000. It's too expensive for us.</p>
00:03:11	00:03:20	<p>[Woman 1]: And you want to separate another room here.</p> <p>[Woman 2]: Right.</p> <p>[Woman 1]: Then to see if he can agree.</p>
00:03:21	00:03:30	<p>[Woman 2]: I'll separate this room...</p> <p>[Man 1]: It's not that he agrees or not. Just say that I need to separate the room to release the pressure. If he agrees, no change for him.</p>
00:03:31	00:03:40	<p>[Man 1]: It basically won't affect him. Make a wall here and add a door. Very quick. But if he disagrees, he will cancel the lease.</p> <p>[Woman 1]: OK.</p>
00:03:41	00:03:59	<p>[Woman 1]: Like this?</p> <p>[Woman 2]: [In English] OK.</p> <p>[Woman 1]: OK. Sorry. According to their discussion, since my friend, this apartment's owner, her son found a job downtown and also rented in another location.</p>
00:04:00	00:04:10	<p>[Woman 1]: And she is thinking about if it's possible to make this space in a separate room. So they will put a wall here, a door.</p>
00:04:11	00:04:19	<p>[Woman 1]: And she wants to divide it into one bedroom. And here for the future bedroom.</p>
00:04:20	00:04:30	<p>[Woman 1]: So she can release some stress because her son is renting in another location.</p>

00:04:31	00:04:45	[Woman 1]: And as per current market price, this location, suit like this almost needs \$2,900.
00:04:46	00:05:01	[Woman 1]: So if you accept. Keep the...[In Chinese] You want his current rent to remain unchanged, [inaudible], right?  [Woman 2]: Yes.  [Woman 1]: [In English] Keep the current rent. No change to your rent.
00:05:02	00:05:10	[Woman 1]: But she wants to use this space to make another room and rent it out for her friend and a family member.
00:05:11	00:05:20	[Woman 1]: How do you think?  [Man 2]: I don't think that is a discussion that should be had.
00:05:21	00:05:30	[Man 2]: Because you came here to do a maintenance inspection, I'd like to keep the conversation to the maintenance.  [Woman 1]: So you don't agree?
00:05:31	00:05:40	[Man 2]: I would rather not talk about this, because that's not the purpose of this visit.  [Man 1]:[In Chinese] [inaudible]  [Woman 1]: Whatever you say. He disagrees with it.
00:05:41	00:05:50	[Woman 2]: If he doesn't agree, we will take the apartment back...  [Woman 1]: And let your son live in?  [Woman 2]: Yes.  [Woman 1]: [In English] OK.
00:05:51	00:06:00	[Woman 1]: So if you don't agree to that option, then she wants to take back this suit.

00:06:01	00:06:10	[Man 2]: I'm not saying that I agree or I don't agree. I was saying that you came here to do a maintenance inspection, as
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		it's your right. This isn't the conversation of a maintenance inspection.
00:06:11	00:06:23	[Woman 1]: Wait, there are two options. The first option is make maintenance and make this space a bedroom and rent it out for her family member.
00:06:24	00:06:34	[Woman 1]: Because her son rents another location. So her finances have very strong stress.
00:06:35	00:06:44	[Woman 1]: And this is option one. Option two, if you don't agree make this, that means you will share this with another person.
00:06:45	00:06:54	[Woman 1]: But he will just use this space and your current rent will not rise or nothing change. This is option one.
00:06:55	00:07:10	[Woman 1]: Option two is, if you don't agree, then she wants to take the suit back. In the future, her son will go to live here.
00:07:11	00:07:22	[Woman 1]: And She will give you N12. What do you think? Which one?  [Man 2]: Again? I'm not going to say whether I agree or not.
00:08:24	00:08:30	[Woman 1]: How long is the contract you signed?  [Woman 2]: One year.  [Woman 1]: Has the contract expired?  [Woman 2]: A long time ago.
00:08:31	00:08:43	[Woman 1]: [In English] So the contract, she said you both made a contract before. The term is one year. So that contract was already terminated actually.
00:08:44	00:08:54	[Woman 1]: And if you don't wanna take the first option, then she wants to take the whole suit back.
00:08:55	00:09:01	[Man 2]: I said that the contract has finished its contract term under Ontario law.
00:09:02	00:09:12	[Man 2]: After that, it switched to a month-to-month.  [Woman 2]: [In Chinese] Yes, he paid it month by month. After the lease ends, he pays rent month by month.





00:09:13	00:09:20	<p>[Woman 1]: So you want to take the apartment back now?</p> <p>[Woman 2]: Yes, he didn't agree, so I had no choice but to take the apartment back.</p> <p>[Woman 1]: So how should I put it?</p>
00:09:21	00:09:30	<p>[Woman 2]: You don't have to tell him. We will just issue N12 when the time comes.</p> <p>[Woman 1]: I just told him about N12.</p> <p>[Woman 2]: Then nothing else. Because</p>
00:09:31	00:09:40	<p>[Woman 2]: My initial thought was that we could discuss it together. He doesn't have to move out either.</p> <p>[Woman 1]: He has a tough attitude.</p> <p>[Woman 2]: Yes, if he doesn't want to, that's okay. I had no choice but to take the apartment back and use it for myself.</p>

18. 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 a sincere 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.
19. 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.
20. It is clear from the recording transcript, the Landlord's testimony, XM's testimony and the totality evidence before me at the hearing, that the Landlord did not, in good faith, intend for her son to occupy the unit.
21. On January 27, 2023, the Landlord served the Tenant with an N12 notice indicating she requires the unit for her child's use. This N12 notice gave a termination date of March 31, 2023. After the Landlord realized that she did not pay the compensation as required, she served a new N12 notice on April 25, 2023, indicating she requires the unit for her child's use. This N12 notice gave a termination date of June 30, 2023.
22. The timing of the conversation and the service of the first N12 notice is particularly relevant

in my determination. The discussion was January 15, 2023, and the notice was served January 27, 2023, which are 12 days apart. Based on the evidence and testimony

Order Page 8 of 10

provided at the hearing, I find it more likely than not that had the Tenant acquiesced to the Landlord's attempt to convert the unit into a 2 bedroom and rent out the additional bedroom, the notice of termination would not have been served.

23. The direct consequence of the Tenant's refusal to allow the Landlord to move someone else into the unit and unilateral change to their agreement was the Landlords' decision to seek eviction. As a result, I am satisfied that the reason for the application being brought is that the Tenants attempted to secure or enforce their legal rights. Pursuant to s. 83(3)(c), refusal of the application for eviction is mandatory; the Landlords' application must be dismissed.
24. Even if I am wrong in my application of section 83(3)(c), as stated above, I do not find that the Landlord has satisfied the "good faith" requirement in s.48(1) of the Act.
25. Based on the above, this application is dismissed.

#### Costs

26. After XM testified, it was discovered that the Landlord essentially lied during her entire testimony. The Tenant requested that the Landlord be ordered to pay costs to the Board and the Tenant for abuse of process and for wasting his and the Board's time.
27. The Landlord's legal representative did not provide any submissions on the issue of costs although invited to do so.
28. Section 204(3) of the *Residential Tenancies Act*, 2006 permits the Board to order a party to pay the Board's costs of a proceeding. Board Interpretation Guideline 3 states that the Board expects that parties act reasonably in pursuing their applications and Board costs are ordered to encourage proper conduct. Board costs are awarded sparingly, in situations where the Board has expended unnecessary resources as a result of a party's or a party's representative's unreasonable conduct.
29. The Interpretation Guideline says the Board does not want to use its power to award costs in a way which would discourage landlords and tenants from exercising their statutory rights. As a result, and in the normal course of events, the only item of costs that will be awarded is the filing fee to a successful party. There are exceptions; however, generally speaking, costs may be ordered where a party's conduct in the proceeding was unreasonable. Conduct is unreasonable if it causes undue expense or delay.
30. Although the proceedings were long compared to other matters, it was in part due to a language barrier in which the Landlord had hired an interpreter to support her. However, misleading the Board or anyone else during the proceedings which in turn causes unnecessary delay is completely inappropriate and, in my view, warrants costs to be paid to the Board and to the requesting party.



31. Based on the above, I am satisfied that the Landlord's unreasonable conduct has expended unnecessary Board resources and is an abuse of process. Pursuant to Rule 23.4 of the Board's Rules, an order for costs payable to the Board shall not exceed a maximum of \$700.00. The Landlord will be ordered to pay Board costs in the amount of \$350.00 as well as \$350.00 paid to the Tenant.

### *Compensation*

32. Section 73.1 of the Act provides that when a Landlord has paid compensation in accordance with s.48.1 and the Board refuses to grant an application to terminate the tenancy and evict the tenant, the Board can order that the tenant pay back the compensation to the landlord.

### **It is ordered that:**

1. The Landlord's application is dismissed.
2. The Landlord shall pay to the Tenant the amount of \$350.00 in costs, on or before May 26, 2024.
3. The Landlord shall pay to the Board the amount of \$350.00 in costs, on or before May 26, 2024.
4. If the Landlord does not pay the full amounts owing on or before May 26, 2024, the Landlord shall start to owe interest. This will be simple interest calculated from May 27, 2024, at 7% annually on the balance owing.
5. The Tenant shall pay back the Landlord for the compensation they received. They shall pay the Landlord this amount on or before June 30, 2024.
6. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2024, at 7.00% annually on the balance outstanding.

**May 15, 2024**  
**Date Issued**

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Colin Elsby  
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.

