



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

Citation: Yu v Yu, 2024 ONLTB 26870

Date: 2024-05-01

File Number: LTB-L-064175-23

In the matter of: 48 LUZON AVE
MARKHAM ON L6B1N6

Between: Jiabi Yu
Waikin Chong Former
Landlords

And

And

Kim Lun Edward Yu Tenants
Cheuk Yau Clement Yu Cheuk
Hei Nicholas Yu
On Ni Annie Yuen

Rui Molly Wu Landlord

Jiabi Yu and Waikin Chong (the 'Former Landlords') and Rui Molly Wu (the 'Landlord') applied for an order to terminate the tenancy and evict Kim Lun Edward Yu, Cheuk Yau Clement Yu, Cheuk Hei Nicholas Yu and On Ni Annie Yuen (the 'Tenants') because:

- the Former Landlords and the Landlord have entered into an agreement of purchase and sale of the rental unit and the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 7, 2024.

The Landlord, R. Wu (the 'Landlord'), the Landlord's Legal Representative, H. Hao and the Tenants K. Yu and O. Yuen attended the hearing.

Determinations:

Preliminary Issues – One Month's Rent as Compensation

1. At the hearing, the Tenants raised a preliminary issue that they had not received an amount equal to one month's rent as compensation pursuant to subsection 49.1(1) of the *Residential Tenancies Act, 2006* (the 'Act') which states that "a Landlord shall compensate a Tenants in an amount equal to one month's rent or offer the Tenants another rental unit acceptable to the Tenants..."
2. The Landlord testified at the hearing that as per an email deemed served to the Tenants on August 15, 2023 as the Tenant came to the attention of the Tenant, the Landlord provided a letter to the Tenants indicating that the rent for the rental period of September 3, 2023 to October 2, 2023 has been waived in accordance with the requirements of the Act.
3. The Tenants testified at the hearing and provided documentary evidence that the Tenants had paid the monthly rent for the period of September 3, 2023 to October 2, 2023 which was accepted by the Landlord.
4. The Landlord provided oral testimony and documentary evidence to show that on January 22, 2024, the Landlord's Legal Representative had emailed the Tenants as the Representative's office had become aware that the Tenants had paid the rent which was subsequently accepted by the Landlord. In the email, the Representative states that the Tenants do not need to pay the rent for February 3, 2024 in order to compensate the Tenants. However the rent was paid.
5. The Landlord sent another email on February 29, 2024 requesting a compensation method for the Tenants as they had attempted to compensate the Tenants by waiving rent but the Tenants had continued to pay the lawful monthly rent.
6. Section 55.1 of the Act requires that compensation due pursuant to subsection 49.1 of the Act is paid no later than the termination date found on the N12 notice of termination.
7. Subsection 190(2) of the Act states that "the Board may extend or shorten the time requirements with respect to any matter in its proceedings, other than the prescribed time requirements, in accordance with the rules."
8. Section 56 of the Ontario Regulations 516/06 under the Act restricts the alteration of time in 21 circumstances—none of which relate to the payment of the compensation pursuant to section 55.1 of the Act. Given the unique and extraordinary condition that led to the delay

in this case, I find it appropriate to extend the time for the payment of the compensation due under section 55.1 of the Act.

9. The evidence before the Board suggests that the Landlord had attempted to waive compensation for the period of September 3, 2023 to October 2, 2023 via a letter deemed served on the Tenants on August 15, 2023. I find that the Tenants were effectively responsible for the Landlord's failure to comply by refusing to accept the compensation.
10. The Landlord owes the Tenants compensation equal to one month's rent.

L2 Application – Landlord's Own Use

11. 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.
12. The Tenants were in possession of the rental unit on the date the application was filed.
13. On August 15, 2023, the Landlord gave the Tenants an N12 notice of termination via email which was deemed served on August 15, 2023 with the termination date of November 2, 2023 which is the end of the rental period. The notice was given on behalf of the Landlord who claims that they require vacant possession of the rental unit for the purpose of residential occupation of the rental unit by the Landlord and the Landlord's parents.
14. The Landlord entered into an agreement of purchase and sale with the former Landlord with a completion date of September 1, 2023. The Tenant did not dispute that the transaction was completed on September 1, 2023.
15. The Landlord has proven that:
 - The residential complex contains three or fewer units.
 - the Landlord has entered into an agreement to purchase and sale of the residential complex.
 - The Landlord in good faith requires possession of the rental unit for the purposes of their own residential occupation.
16. The Tenants raised several issues to contest the Landlord's good faith intention including the following:
 - The Landlord's application should be denied as the Landlord has issued another prior N12 Notice of Termination to terminate the Tenants' tenancy in the past;
 - The Landlord previously resided with her boyfriend and could not have known that her relationship with her boyfriend would end at the time the Notice of Termination was served;
 - The Landlord has indicated that she intends to move into the rental unit with her parents but no evidence was provided of any steps taken to have her parents immigrate to Canada.

Disclosure of Prior N12 or N13 Notices

17. Section 71.1(3) of the Act, which came into force on September 1, 2021, requires the Landlord to provide certain information about all N12 and N13 notices served in the previous two years with the Landlord's application.
18. The Landlord's application was filed on August 16, 2023.
19. A similar issue was raised in application TNL-36369-21. Vice-Chair Ian Speers there 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 the Landlord's previous use of notices of termination under section 48, 49, or 50."

20. 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) provides that "the Board shall refuse to accept the application for filing if the Landlord has not complied with subsection (3)," but 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.
21. In this case, the Tenants raised the issue of the non-disclosed N12 notice of termination. As a result, I find that the Tenants was not prejudiced in their ability to investigate patterns in the Landlord's use of N12 or N13 notices. The Tenants were not prejudiced in their ability to argue that any pattern undermined the good faith of the Landlord's service of the within N12 Notice.

Good Faith Intention of the Landlord's Parents to Reside in the Rental Unit for One Year

22. Section 49.1(1) of the Act requires that, in order to be successful in this application, the Landlord must satisfy me that they require, in good faith, the unit for residential use, in this case by RW and her parents.
23. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As indicated, in the case law (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"), this legal test remains unchanged under the successor legislation (see *Salter*, para 25 and 26).
24. However, the subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application and also that the landlord's motives are "largely irrelevant", I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC).

25. The Tenants testified that the Landlord had served a previous N12 notice on June 16, 2023 with a termination date of September 3, 2023 indicating that the Landlord's parents intended to move into the rental unit.
26. It was uncontested that the Landlord had served the Tenants with the N12 Notice of Termination. The Landlord testified that they had not proceeded on the previous Notice of Termination as there were issues with the notice.
27. The Tenants testified that the previous notice shows that the Landlord has acted in bad faith.
28. The Landlord testified that she served both N12 Notices and brought this application in good faith but that there were difficulties with the previous N12 so the Landlord did not proceed with the prior N12 Notice of Termination.
29. The Landlord was unable to provide any documentation to support the fact that her parents would be moving to Canada and residing with the Landlord in the unit. I find it strange that the Landlord would not have their parents present at the hearing to testify of their intention to move into the rental unit, especially given that the Landlord did not have any documentary evidence to show that her parents would be moving to Canada to reside in the rental unit.
30. I note that the previous N12 Notice states that the Landlord's parents intend to move into the rental unit.
31. The Landlord's evidence does not persuade me, on a balance of probabilities, that the Landlord's parents genuinely intend to reside in the rental unit.

Good Faith Intention of the Landlord to Reside in the Rental Unit for One Year

32. The subsequent and current N12 Notice of Termination included the Landlord as an intended occupant of the unit. The Landlord testified that at the time of serving both N12 notices, she did not know she would be living with her boyfriend and had intended to move into the rental unit with her parents but not her boyfriend. The Landlord further testified that she had no knowledge at the time of serving either notice that her boyfriend and her would be breaking up. The Landlord testified that she intends to move into the unit along with her parents and has always intended to move into the rental unit with her parents.
33. Based on the previous N12 Notice of Termination that was served on the Tenants, I do not believe the Landlord originally intended to move into the rental unit when the first N12 notice was served as it did not indicate that the Landlord intended to move into the rental unit. However, the Landlord testified that she broke up with her boyfriend in December 2023. To this effect, the Landlord entered into evidence her current tenancy agreement to show that the Landlord had forced her to move out and as a result wishes to move into the rental unit. The evidence submitted by the Landlord supports this position. I accept the Landlord's evidence that her circumstances have changed and that is why she intends to reside in the rental unit.
34. I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intentions that they now intend to reside in the rental unit. I am therefore satisfied on a

balance of probabilities, that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation.

35. The Tenant was required to pay the Landlord \$9,941.40 in daily compensation for use and occupation of the rental unit for the period from November 3, 2023 to March 7, 2024, less any amount already paid.
36. Based on the Monthly rent, the daily compensation is \$78.90. This amount is calculated as follows: \$2,400.00 x 12, divided by 365 days.
37. The Landlord collected a rent deposit of \$2,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$119.54 is owing to the Tenant for the period from September 3, 2021 to March 7, 2024.

Section 83 – Relief from Eviction

38. 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 August 31, 2024 pursuant to subsection 83(1)(b) of the Act.
39. The Landlord testified at the hearing that she has a month-to-month lease with a friend and is renting a room. The Landlord lives alone with her dog.
40. The Landlord also testified that her parents are not currently in Canada and did not provide any evidence to suggest that there was any urgency to the parent's need to move into the rental unit. Further, I did not find the Landlord's testimony that her parents would be moving into the rental unit to be credible.
41. As a result, I do not find the Landlord's requirement for the rental unit to be of any urgency.
42. The Tenants testify that they live in the unit with their two adult dependent children.
43. The Tenants testified that their son experienced a serious medical event and, as a result, that they had requested the Landlord stop asking about termination of the tenancy.
44. The Tenants testified that their son will be graduating from university in June 2025 and that if the Tenant is forced to move, it will affect their son's schooling.
45. Based on the disclosed circumstances, I find that it would not be unfair to postpone the eviction until August 31, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The Landlord shall pay the Tenants \$2,460.00 in compensation on or before May 12, 2024.
2. If the Landlord makes the payment required in paragraph one above, the tenancy between the Landlord and the Tenants is terminated as of August 31, 2024. The Tenants must move out of the rental unit on or before August 31, 2024.
3. If the unit is not vacated on or before August 31, 2024, then starting September 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 September 1, 2024.
5. The Tenant shall pay to the Landlord \$9,941.40, which represents compensation for the use of the unit from November 3, 2023 to March 7, 2024, less any amount already paid.
6. The Tenant shall also pay the Landlord compensation of \$78.90 per day for the use of the unit starting March 8, 2024 until the date the Tenant moves out of the unit.
7. The Landlord owes \$2,519.54 which is the amount of the rent deposit and interest on the rent deposit.
8. If the Tenant does not pay the Landlord the full amount owing on or before August 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2024 at 7.00% annually on the balance outstanding.

May 1, 2024

Date Issued

Christopher Lin

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 Tenants expires on March 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.