



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

Citation: Kellezi v Slipski, 2024 ONLTB 10753

Date: 2024-02-13

File Number: LTB-L-022074-23

In the matter of: 1613, 2083 LAKE SHORE BLVD W ETOBICOKE
ON M8V4G2

Between: Ledia Kellezi Landlord

And

Jakub Slipski Tenant Kawsica Balachandran

Ledia Kellezi (the 'Landlord') applied for an order to terminate the tenancy and evict Jakub Slipski and Kawsica Balachandran (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 October 18, 2023.

The Landlord and the Landlord's Legal Representative, M. Sturino and the Tenant, K. Balachandran and the Tenant's Legal Representative, K. Flores attended the hearing.

Determinations:

Preliminary Issue-Compensation

1. The Tenant submits that although they were paid compensation in the amount of \$1,900.00, the lawful rent is \$2,000.00 and as such, compensation has not been paid in full, pursuant to section 48.1 of the *Residential Tenancies Act, 2006*.

2. The lease that was signed in 2020 indicates that the monthly rent was \$2,100.00. Due to the pandemic, the rent was renegotiated at \$1,900.00. \$1,900.00 was paid until February 2022. The rent was increased to \$2,000.00 and that amount was paid from March 1, 2022 until March 2023. The Tenant then started paying \$1,900.00 starting on April 1, 2023 because they took the position that that was the lawful rent, and the increase to \$2,000.00 was an increase above the guideline and therefore unlawful.
3. The Landlord sent the Tenants the compensation cheque to the Tenants by mail on May 24, 2023 in the amount of \$1,900.00, in accordance with the Tenant's position that the lawful rent is \$1,900.00.
4. The Tenant's legal representative submits that the Tenant has filed a T1 application with the Board alleging an illegal rent increase and a determination that the rent is \$1,900.00.
5. For the purpose of compensation pursuant to section 48.1 of the Act, I find that the Landlord has paid the required compensation. It is clear from the evidence that at the time that compensation was paid, the Tenant's position was that the legal rent was \$1,900.00, and any amount above that was an illegal rent increase. The Tenant alleges at this hearing that they are now claiming that the lawful rent is in fact \$2,000.00, however, it would appear that that is not their position, as evidenced by the T1 application they are pursuing.

L2 application

6. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenancy is terminated.
7. The Tenant was in possession of the rental unit on the date the application was filed.
8. On March 7, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child.

Good Faith Intention

9. The Landlord's son, D. Kellezi testified on behalf of the Landlord. He testified that he resides with his parents and requires the rental unit so that he can start a life with his longterm partner, purpose and start a family. He testified that the rental unit is closer to his employment, which is in downtown Toronto, and he currently lives in Vaughn. He testified that given the current market; he cannot afford to buy his own home.
10. D. Kellezi testimony was not challenged on cross examination.
11. The Tenant testified that she believes that the Landlord will re-rent the unit for a higher amount if the tenancy is terminated.
12. The Tenant testified that she moved into the unit in March 2020 with her husband. Sometime in 2021, she moved out of the unit due to marriage difficulties, then moved back into the unit in March 2022.

13. The Tenant testified that herself and her husband came to an agreement with the Landlord in Feb 2021 to reduce the rent to \$1,900.00 due to the pandemic and what comparable units were going for. It was the Tenants that approached the Landlord about the decrease, and the Landlord agreed. The decrease was to apply from February 2022 for a period of 1 year.
14. In early 2022, discussions resumed again regarding the rent. The parties went back and forth about the rent amount and the Tenant sent post-dated cheques in the amount of \$1,900.00 to the Landlord. Once the Landlord received the cheques, she sent a message to the Tenant advising that that was not the agreed upon amount and that he they did not pay her the full amount, he would have to vacate by the end of March 2022. The Tenant advised the Landlord at that point that he would vacate at the end of March 2022.
15. As a result of this, the Landlord found someone to move into the unit for \$2,000.00 and advised the Tenant of this. The Tenant sent a message to the Landlord advising that he obtained legal advice and will not be moving out. The parties came to an agreement in March 2022 in regard to the rent at an amount of \$2,000.00.
16. In December 2022, the Landlord gave the Tenant an N12 notice of termination for her son to move into the unit. This notice was defective, so the Landlord gave the Tenant an N12 notice in March, 2023, that is subject to this application.
17. It is the Tenant's position that the real reason the Landlord served the N12 was so that she could rent the unit for more than what the Tenant is paying.
18. The Tenant testified on cross that the Landlord did not attempt to collect more than the amount of the original lease.

Analysis

19. The Courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a Landlord seeking possession of a rental unit for the purpose of residential occupation by the Landlord's child.
20. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, R.S.O. 1990, c. L.7, and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
21. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the issue under subsection 51(1) of the *Tenant Protection Act*, 1997, S.O. 1997, c. 24. The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."

22. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

23. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord’s child genuinely intends to move in.
24. Based on the evidence before me, I find, on a balance of probabilities, that the Landlord in good faith requires possession of the rental unit for the purpose of their son’s residential occupation for a period of at least one year.
25. I found D. Kellezi’s testimony about the reasons he wants to move to the rental unit to be straightforward and consistent, therefore reliable.
26. I am not satisfied that the Landlord served the N12 notice for any purpose other than her son’s intention to move into the unit. This seems to be a situation where both parties were unsure of how to navigate a process in which the original agreed upon rent amount was lowered during the pandemic upon request of the Tenant. The evidence presented at the hearing by both parties suggest that the reduction in rent was for a set period of time, and this is seen through the text messages. I am not convinced that the Landlord’s intentions behind the N12 notice have anything to do with the amount of rent the Tenant was paying. The conversations between the parties, although maybe misinformed, were always cordial and respectful.
27. With respect to the Tenant’s allegation that the Landlord found a new Tenant willing to pay \$2,000.00 and to move in for April 1, 2022, this was in response to the Tenant advising the Landlord through text message that he was vacating the unit at the end of March 2022. Once the Tenant informed the Landlord that he would not be moving, the parties renegotiated the rent for \$2,000.00, still lower than the original lease amount of \$2,100.00.
28. The Landlord collected a rent deposit of \$700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$37.07 is owing to the Tenant for the period from February 29, 2020 to October 18, 2023.
29. 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

30. K. Balachandran testified that she resides in the unit with her husband. She testified that comparable units in the area are renting for upwards of \$3,500.00 and that is unaffordable. She requested 8 months to vacate the unit.
31. The Landlord requests a standard order. The Landlord submits that the Tenant has already had 8 months since the service of the N12 notice to find another place to live and any further delay is unreasonable.
32. I find that a delay in terminating the tenancy is reasonable in the circumstances. The Landlord's son is the intended occupant, and he is not at any risk of homelessness as he currently resides with his parents. I am mindful of his desire to start the next chapter of his life, however, that desire does not outweigh the potential prejudice faced by the Tenants as a result of this tenancy terminating. I find that delaying the termination to April 30, 2024 is fair in the circumstances, this takes into account the delay in issuing this order.
33. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting April 1, 2024, the Landlord 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 unit to the Landlord on or after May1, 2024.

February 13, 2024

Date Issued

Emily Robb

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.

File Number: LTB-L-022074-23

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 1, 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.

2024 ONLTB 10753 (CanLII)