



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

Citation: Marco Maggio & Company v Gagnier, 2024 ONLTB 4635

Date: 2024-01-22

File Number: LTB-L-028741-22

In the matter of: Lower, 855 LINCOLN RD WINDSOR
ON N8Y2G9

Between: Marco Maggio & Company Landlord

And

Matthew Gagnier Tenant

Marco Maggio & Company (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Gagnier (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 January 8, 2024 at 09:00am.

The Landlord Representative Jessica Johnston, the Landlord, the Tenant Representative John Kulikowski, the Tenant and the Landlord Witness interpreter Ana Smiljanic attended the hearing.

Preliminary Issues:

1. At the outset of the hearing the Tenant Representative requested I dismiss the Landlord application as the Landlord failed to provide compensation on or before the termination date pursuant to Section 48.1 of the Residential Tenancies Act, 2006.
2. In response the Landlord representative submitted that the Landlord had offered the Tenant compensation, but the Tenant refused owing to directions received from their legal counsel. She then testified that when she was retained, she directed the Landlord to send the cheque by mail. This was supported by a text message between the Landlord and Tenant from May 19, 2022, entered in evidence. Based on this evidence I was satisfied that the Landlord had attempted to compensate the Tenant prior to the termination date and denied the Tenant Representatives request.

3. The Tenant Representative then requested I dismiss the Landlord's application as the N12 Notice to Terminate the Tenancy (N12 Notice) was defective, owing to it listing the corporate entity and not the Landlord.
4. In response the Landlord Representative submitted that it was common practice and accepted by the Board for Landlord's to use their corporate entity on notices and correspondence. Agreeing with the Landlord Representative, I again denied the Tenant Representatives request and directed the matter would proceed.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy Therefore, the tenancy is terminated effective March 31, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 30, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on the same date with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their mother Danica Mistic.
4. The Landlord compensated the Tenant an amount equal to one months rent on January 26, 2023 by providing a cheque.

Landlord testimony and evidence

5. Danica Mistic testified, through her interpreter, that she was in good health, however, had been diagnosed as a paranoid schizophrenic. This was supported by a letter from her doctor submitted in evidence. She also testified that she currently lived her son Dragan Mistic in his three-bedroom two-bathroom house, occupying a main floor bedroom and had access to her own bathroom. She further testified that she intended to live in the rental unit until the end of her life. This was also supported by an affidavit entered in evidence.
6. On cross examination she testified that she was capable of getting up and down stairs without assistance but her son and his wife both helped to take care of her. She also testified that her son currently slept on the couch, while his wife slept in the master bedroom with their newborn and their other child occupied the third bedroom.
7. Dragan Mistic testified that he had bought the rental property, a two-unit house, with his business partner Marco Maggio in February 2022 and took over control of the rental property in August 2022 owing to Marco Maggio having issues with the Tenant. He also testified to having bought the property as an investment with the eventual goal of moving his mother into one of the units. He also testified to having power of financial and medical attorney of his mother and between he and his wife they took care of her to include ensuring she took her medication. He further testified that they would like to gain possession of the property no later than February 29, 2024.

8. On cross examination he testified that the house he currently lived in was his mothers and that he had lived there for 30 years. He also testified to using the corporate entity on the N12 Notice in order to avoid any conflict with the Tenant as it was his submission that the Tenant was vindictive, and he wanted to avoid any conflict. He also testified that his mother rarely left the residence except for medical appointments, however, her health had been improving since he and his wife took over the management of her medication. He was steadfast in his testimony that there was no other reason for wanting to move his mother into the rental unit other than to keep her close while giving his family more room to live.
9. He also testified that since serving the N12 Notice the Tenant had continued to pay the rent on time and would not be seeking compensation.
10. Marco Maggio testified that he had bought the property as an investment with Dragan and although he initially was responsible for the collecting of rent, he eventually handed that over to Dragan as he didn't like how the Tenant talked to him.

Tenant testimony and evidence

11. The Tenant testified that he lived in the unit for over 16 years and that when he first moved in the original landlord had agreed to not increase the rent and eventually sell the property to him. However, due to him not being able to secure a mortgage the landlord sold the property to Marco Maggio. He also testified to not learning that Dragan Misic was a landlord until he had filed the application with the board.
12. In response to Dragan Misic submission that he was vindictive, he testified to having no issues with Dragan but rather his mother, claiming she on several occasion had become violent towards him and other neighbours to include physical violence. He also testified to having a recording of a conversation between himself and Marco Maggio in which he claimed Marco Maggio stated Dragan's mother wouldn't be moving in but rather Dragan's brother-in-law and they would charge him more rent. He testified to having provided the recording to his representative.
13. Canvassing the Tenant Representative, he testified to having reviewed the recording and submitted it wasn't of the best audio quality and did not intend to submit it.
14. The Tenant then testified, on cross examination, to being bipolar, unemployed and collecting ODSP. Given the rent was currently \$650.00 a month, being estranged from his father and girlfriend and that his mother currently lived with his brother and his family, he didn't think he would be able to find a place to live that he could afford as he had been attempting to do so since receiving the notice.

Final submissions

15. The Landlord Representative submitted that the Landlord brought their application forward in good faith. It was clear by Danica Misic's testimony she intended to live in the rental property for as long as possible thereby affording her son the room required for his growing

family. She also submitted that despite the Tenants testimony he had alternative housing options with his family. Accordingly for these reasons she requested that the tenancy be terminated effective February 29, 2024.

16. In response the Tenant Representative submitted that the Landlord Dragan Mistic's deliberate attempts to hide his identity from the Tenant amounted to bad faith. It was also his submission that eviction should be denied owing to the entirety of circumstances before me. Specifically, the Landlord was in a better position to care for his mother by maintaining the current living situation. Furthermore, by moving his mother into the rental unit it would be at the detriment to both his mother and the Tenant. Accordingly, for these reasons he requested that I deny eviction.

Analysis

17. Given the circumstances before me and for the reasons that follow, I am satisfied the Landlord in good faith requires possession of the rental unit for the purpose of their mother, Danica Mistic residential occupation for a period of at least one year.
18. First, I found the Landlord Dragan Mistic reasons for wanting to move his mother into the rental unit reasonable given his current family situation. Secondly, despite the Tenant Representative's submissions I do not agree that Dragan Mistic choice to keep the corporate entity name on the N12 Notice as evidence of bad faith. On the contrary, the Tenant's own allegations towards Danica Mistic, give credibility to the reason he has given, specifically, in order to avoid any conflict.
19. Finally, although I acknowledge the financial strain that an eviction would impose on the Tenant, I am satisfied that this could be offset by a delay while not overtly prejudicing the Landlord.
20. The Landlord collected a rent deposit of \$650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from May 31, 2012.
21. 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

22. 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 March 31, 2024, pursuant to subsection 83(1)(b) of the Act.
23. Specifically, owing to the Tenant's health issues I and the fact he has continued to pay the rent, I am satisfied a delay is warranted in order to allow him time to secure financial support, save money and find a new rental property.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective March 31, 2024.
2. If the unit is not vacated on or before March 31, 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.

January 22, 2024

Date Issued

Kelly Delaney

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 August 3, 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.