



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

Citation: Zhang v Thomson, 2023 ONLTB 74541

Date: 2023-12-14

File Number: LTB-L-023647-23

In the matter of: UNIT 1, 178 ADELAIDE AVE E OSHAWA
ON L1G1Z4

Between: Ruo Chen Zhang Landlord

and

Dawn Thomson Tenant

Ruo Chen Zhang (the 'Landlord') applied for an order to terminate the tenancy and evict Dawn Thomson (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 October 4, 2023.

The Landlord's Legal Representative, Glenn Gosling, the Landlord, the Tenant, and John Peckham, present as support for the Tenant, attended the hearing. The Tenant declined the opportunity to speak with Duty Counsel prior to the start of the proceeding.

Determinations:

1. 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 will be terminated; however, for the reasons set out below I have exercised my discretion to extend the eviction date to January 31, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination - Landlord's Own Use

3. On March 10, 2023, the Landlord mailed the Tenant an N12 notice of termination with the termination date of May 31, 2023. The Landlord claims they require vacant possession of the rental unit for the purpose of residential occupation.
4. While the Tenant raised a concern about the identification of the city in which the rental unit is located on some materials it was confirmed the N12 Notice and application correctly identify the rental unit address as in the City of Oshawa.

One Month's Compensation

5. The Landlord testified he sent one month's compensation to the Tenant via registered mail on March 24, 2023. A corroborating receipt for a money order made out to the Tenant in the amount of \$1,068.50 dated March 23, 2023 as well as a corroborating receipt from Canada Post dated March 24, 2023, and photo of the outside of an envelope with a corresponding registered mail label were submitted into evidence.
6. The Landlord testified the letter was delivered to the Tenant but she refused it. The Tenant confirmed she refused the registered letter and testified she did so because she did not know what it was.
7. The Landlord testified the letter and funds within it remain available for pick up by the Tenant and provided a copy of the Canada Post tracking information.
8. The Canada Post tracking record indicates the Tenant refused delivery of the letter on March 28 and that as of April 18, the last entry on the record, the registered letter is on hold at a secure facility. Beside this entry the record states contact Customer Service.
9. The Tenant testified she has been ill and so has not been able to go and pick up the letter but admitted that once she is better she would be able to go and pick it up.
10. On the basis of the above evidence, I find it more likely than not that one month's compensation was provided to the Tenant before May 31, 2023 and remains available to the Tenant through Canada Post.
11. The payment of one month's compensation is in the form of guaranteed funds and there was no evidence before me that such funds will expire. As a result, I do not find it is necessary to extend the date by which the Landlord must pay the Tenant one month's compensation under the Act as I find the funds are still available to the Tenant.
12. In the above circumstances, where the Tenant's own actions have, albeit allegedly unknowingly, prevented them from receiving the benefit of the funds and I have found they are still able to retrieve the funds I do not find that the Landlord's application ought to be dismissed.
13. I find the Landlord paid the Tenant one month's compensation in accordance with the requirements under the Act.

Landlord intends to reside in the rental unit for a period of at least one year

14. The Landlord filed a sworn declaration indicating he intends to reside in the rental unit for residential purposes for a period of at least one year. At the hearing he affirmed his declaration was and is still true and testified he intended to live in the rental unit for two to five years.
15. The Landlord is in his early thirties. He testified he currently resides with his parents and wants to move out and live in his own space – regardless of the finishes in the place.
16. The Tenant testified she was assured – by who was not indicated - nothing would change when the Landlord purchased the building but she then began to receive notices of termination.
17. The Tenant submitted this Landlord's application is a continuation of the former landlord's attempts to evict her and that the Landlord is affiliated with the former owners as he works with them.
18. The application indicates an N12 Notice for purchaser's own use was served approximately 9 months before this application was filed and that an application for termination and eviction was also filed. The LTB's records show the Landlord swore and filed the declaration in the earlier application that they intended to reside in the rental unit for a period of one year. That declaration also indicated the Landlord, the then alleged purchaser, was already the owner. At the hearing of the application based on the earlier N12 Notice the application was withdrawn.
19. The Tenant submitted it did not make sense that the Landlord, who she said was a partner in a real estate firm, would genuinely intend to move into the rental unit – a small one bedroom, one bathroom unit. The Landlord testified he works as a realtor and, having never lived alone before, is looking forward to his own space.
20. The Tenant also submitted the rental unit was in poor condition and required work. She submitted the Landlord's intention was to come in, gut the rental unit, fix it up and re-rent it at higher rate.
21. The Tenant testified rent has increased for rental units comparable to hers and submitted the Landlord was really attempting to evict her so that he could raise the rent. The Tenant provided evidence of the rent for comparable units located in her building that are approximately \$700.00 to \$800.00 more than her rent.
22. The Tenant admitted all vital services were functional in her rental unit. However, she testified the doors in the rental unit need to be replaced and that the ceiling in the bathroom is falling out. Nonetheless, the Tenant admitted the bathroom is functional except that the toilet squeaks.
23. The Tenant had no direct evidence the Landlord does not intend to reside in the rental unit.

Analysis

24. When a landlord serves an N12 Notice a landlord's motivations, or desire to move into the rental unit for twelve months need not be reasonable and are largely irrelevant - what is required is that the landlord genuinely intends to live in the property. Nonetheless, where there are other issues, the conduct and motives of the landlord may be considered as part of the good faith analysis. [*Fava v. Harrison*, 2014 ONSC 3352 (CanLII) at para. 17, citing *Salter v Balijinac*, 2001 CanLII 40231 (ON SCDC)].
25. The Tenant is correct that this application is related to the former owner's application as both applications were for the same individual to move in – the now Landlord. However, as this is the same individual, I do not find this evidence leads to an inference that the Landlord does not genuinely intend to occupy the rental unit for a period of at least one year- in fact I find it supports finding the Landlord's evidence he intends to more in is credible as he has been consistent in his expressed intention and pursuit of occupation across two applications.
26. The Landlord's evidence was clear that he did and continues to intend to reside in the rental unit for a period of at least one year. I did not find this evidence was shaken during the hearing.
27. Despite the Tenant's suspicions and the fact that the Tenant thinks the Landlord ought to prefer living someplace larger or nicer, the Tenant had no evidence the Landlord actually intends to do anything other than live in the rental unit for one year.
28. Based on the totality of the evidence before me, I find the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

Mandatory Denial of Eviction not warranted

29. Subsection 83(3)(a) of the Act provides:

83(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

- a. the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

30. In order for section 83(3)(a) to apply, the Board must be satisfied the Landlord is in breach of the Act or a material covenant in the tenancy agreement and that the breach is serious and ongoing at the time of the hearing.

16. I considered whether the Tenant's evidence regarding a prior proceeding and maintenance issues set out above rose to the level of serious and ongoing breach of the Landlord's obligations or material covenants under the Act.

17. The Tenant provided no corroborating evidence of what was meant by the ceiling falling in the bathroom and admitted the issues do not affect her ability to use the bathroom. Further, the Tenant provided no additional evidence of the impact or state of the doors in the rental unit to suggest the state of the doors rise to the level required to find this is a serious issue.
18. The Tenant testified the Landlord has been trying to take advantage of her and her disabilities by threatening and harassing her by serving paperwork. The Tenant clarified by paperwork she meant the earlier N12 Notice and withdrawn application discussed above and the within N12 Notice and this application.
19. As discussed by Vice-Chair Carey in *TET-69036-16 (Re)*, 2017 CanLII 49915 (ONLTB), at para. 70, “the Board will not make a finding that serving a notice of termination to terminate is a breach of the Act unless a tenant can establish that the landlord was deliberately serving notice to harass the tenant as opposed to making a genuine effort to exercise the right to terminate under the Act.”
20. While LTB decisions are not binding, I find this reasoning persuasive. I accept that service of a notice of termination will only amount to harassment where the evidence indicates the Landlord was taking this action for the improper purpose of harassing the Tenant. Additionally, I find that serving a notice of termination will only amount to substantial interference where a landlord’s actions were unreasonable.
21. The Tenant admitted she had no evidence any N12 Notice was served with the intention to harass her. The circumstances surrounding the two N12 Notices suggest there was an issue with the first application and the Landlord served a new N12 Notice and then filed this application.
22. In the above circumstances, I find the evidence insufficient to find that the Landlord, even if they were in violation of the Act – issues on which I make no determination on this application - was in serious and ongoing breach of their obligations under the Act or any material covenants of the tenancy agreement.
23. As a result, the Landlord’s application is not refused under s. 83(3)(a).

Other Section 83 considerations

24. The Landlord sought a standard order for eviction.
25. The Tenant testified she has disabilities that include mental and physical issues and that she receives government support.
26. The Tenant testified she has lived in the rental unit for so many years it is her home. She testified she does not have any friends or family with whom she can reside if her tenancy is terminated and she is evicted.

27. The Tenant testified she has been looking for a new place but has not been able to find anything affordable on her own or with assistance from her community resources. The Tenant testified she is on a tight budget, obtaining groceries from a food bank, and with the increase in rents, would require six months to find a new place to live.
28. Aside from the frustration in having to wait to move into the rental unit, I do not find there was evidence of significant prejudice to the Landlord in continuing to reside with his family for a further brief period. Nonetheless, I find six months is too long for the Landlord to wait. The Tenant has been aware for some time that the Landlord wishes to move in and, having found a genuine intention to occupy, the Landlord is entitled to reside in their property.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find it would not be unfair to postpone eviction until January 31, 2024, pursuant to subsection 83(1)(b) of the Act. This will provide the Tenant with some additional time to find a new place to live following which the Landlord will be able to move into the rental unit.

Daily compensation and rent deposit

30. On its application, the Landlord sought daily compensation commencing the date after the date of termination on the N12 Notice.
31. Based on the Monthly rent, the daily compensation is \$35.13. This amount is calculated as follows: $\$1,068.50 \times 12$, divided by 365 days.
32. The Tenant was required to pay the Landlord \$4,426.22 in daily compensation for use and occupation of the rental unit for the period from June 1, 2023 to October 4, 2023. There was no evidence whether and, if so, how much rent the Tenant has paid since the date of termination in the N12 Notice. It is understood any amounts the Tenant has paid towards rent will be applied towards any arrears owed and/or the daily compensation awarded to the Landlord in this order. In other words, it is understood the Tenant does not have to pay rent twice.
33. The parties agreed there is no last month's rent deposit.

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 January 31, 2024.
2. If the unit is not vacated on or before January 31, 2024, then starting February 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 November 28, 2023.
4. The Tenant shall pay to the Landlord \$4,426.22, which represents compensation for the use of the unit from June 1, 2023 to October 4, 2023.
5. The Tenant shall also pay the Landlord compensation of \$35.13 per day for the use of the unit starting October 5, 2023 until the date the Tenant moves out of the unit.
6. The Landlord shall apply any amounts paid by the Tenant towards rent for June 1, 2023, and onwards towards the balance outstanding under this Order.
7. If there is a balance outstanding under this Order and the Tenant does not pay the Landlord the full amount owing on or before December 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 26, 2023 at 7.00% annually on the balance outstanding.

December 14, 2023

Date Issued

Rebecca Case

Vice Chair, 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 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.