



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

**Citation:** Fenn v Dorman, 2023 ONLTB 77256

**Date:** 2023-11-30

**File Number:** LTB-L-043108-23

**In the matter of:** 120 BOW ST  
London ON N5V1B1

**Between:** Pat Fenn Landlord

**And**

Susan Dorman Tenant

Pat Fenn (the 'Landlord') applied for an order to terminate the tenancy and evict Susan Dorman (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the Purchaser (his daughter Michelle Fenn) in good faith requires possession of the rental unit for the purpose of residential occupation.

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 5, 2023.

The Landlord and his Representative Wendy Cavacas, and his daughter Michelle Fenn (the Purchaser) and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is dismissed.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The issues for resolution in this matter are fourfold:
  1. Did the Landlord pay compensation of one month's rent to the Tenant?
  2. If not, should that deadline be extended?
  3. Did the purchaser of the rental unit, in good faith require possession of the rental unit for residential occupation?
  4. Should relief from eviction be granted?

**1. Did the Landlord pay compensation of one month's rent to the Tenant?**

**4. N12 Notice of Termination: Purchaser's Own Use**

On May 25, 2023, the Landlord purportedly gave the Tenant an N12 notice of termination deemed served on the same date with the termination date of July 31, 2023. The notice was given on behalf of the Purchaser, Michelle Fenn, who claims that she requires vacant possession of the rental unit for the purpose of residential occupation by herself.

5. The Landlord filed a certificate of service in relation to the N12. He claims he left the document in the mailbox at the rental unit on 25 May 2023.
6. The Tenant did not dispute that she received the N12, but she claims she did not know of any compensation, until September 21, 2023, when she received notice of the hearing and the Landlord's documents, one of which narrated his effort to pay the compensation.
7. The Landlord's evidence was that together with the N12, was a letter from his legal representative. The letter states that it was delivered in person. The letter stated that the Tenant would receive compensation of one month's rent, prior to July 31, 2023.
8. There is really no dispute that although the Landlord e-transferred the compensation to the Tenant, she did not receive it. The e-transfer was sent to [susandorman@gmail.com](mailto:susandorman@gmail.com). The Landlord claimed initially that the Tenant gave this email to him. But later, when he was asked if he had any documentary proof that this was her email, he changed his story and said a mutual friend sent her email to him, that friend being his real estate agent. He obtained the email from his real estate agent, who had been in touch with the Tenant and had her email. He admitted that he had never used this email for any other purpose, other than this one time to pay compensation.
9. The Tenant testified that she only has one email, [susandorman59@gmail.com](mailto:susandorman59@gmail.com), and she has used this email for over 20 years. She testified that she had no other email.
10. The Landlord provided proof that the transfer was sent, but it was never claimed or received.
11. I find that the Landlord sent the compensation to the wrong email.

12. I also reject his evidence that the Tenant gave him this email which he used, because he gave inconsistent evidence about this.
13. The Landlord was notified a few weeks after the transfer on June 27, 2023, that the transfer did not go through.
14. By the termination date, compensation had not been paid.
15. The *Residential Tenancies Act, 2006* (the “Act”) states that if a landlord is required to pay compensation, the landlord “*shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord*” (see s. 55.1). That is a mandatory requirement.
16. Even after the payment did not go through, the Landlord was in no hurry to pay compensation. July, August and September went by and no compensation was paid. The Tenant testified that it was only on September 21, 2023, when she was served with notice of the hearing and the Landlord’s document brief, that she knew compensation had been attempted by the Landlord. But up to that point, there was no other attempt to pay her the month’s compensation.
17. The Act stipulates that in place of one month’s compensation, the Landlord can offer the Tenant another rental unit, acceptable to the Tenant (see s. 49.1). The Landlord claims he “offered” the Tenant his late mother’s empty home. But it appears the house was not his to give. The Tenant testified that after their mother’s passing, the house was to be shared between the 5 siblings after the amount owing to the Landlord from his mother was deducted. She testified that the Landlord wanted the whole house, and he took his siblings to court, and he is angry at the Tenant that their mother mentioned her in the will. He then put the rental unit up for sale. She said that this has been going on for two years. She then said “*he only has a hold over me, because of the house. I lost my mother and my brother*”.
18. I find that the offer of the house was not valid compensation, and in any event, the Tenant obviously rejected the offer.
19. As for negotiations for the payment of \$4,000 if the Tenant moved out in a month, this was all pre-N12, when there was no statutory requirement to pay the month’s compensation, and therefore I need not consider it further.
20. The Landlord then said that he did not accept the rent for October, as compensation.
21. In *of D’Angelo v Chamberlain*, 2021 CanLII 139416 (ON LTB), Member Shea held that a landlord’s reliance on the forgiveness of liquidated debt –compensation paid for a previous failed N12 –could not constitute compensation for the purposes of a subsequent N12 unless that intention was clearly and unequivocally communicated to the tenant. The Landlord must tell the tenant that a month’s compensation was being offered in a clear and unequivocal manner. Waiving the rent is not enough:
  24. What the Landlords purport to have done in this case is rely on waiver of the liquidated debt owing to them by the Tenant as a result of the aborted N12 as the

compensation required by section 48 in connection with the second N12 they served in January of 2021.

25. The fact that the Landlords wish to rely on the waiver or forgiveness of a liquidated debt owing by the Tenant to provide the compensation required by section 48 is not the issue. Section 48.1 does not require that a landlord pay an amount to a tenant. It requires that a landlord compensate the tenant and in much the same way as a landlord can provide the compensation required by section 48.1 by waiving or forgiving rent owing for a period prior to the termination date in the applicable N12, a landlord can provide the compensation by waiving or forgiving a liquidated debt owing by the tenant to the landlord as at the termination date in the N12 and equal to one month's rent. **[See, for example, *TNT-05879-18 (Re)*, 2018 CanLII 113853 (ON LTB)]** However, in same way as a landlord who wishes to waive rent is required to clearly and unequivocally advise the tenant prior to the termination date set out in the N12 that the rent is being waived or forgiven, a landlord is required, in my view, to clearly and unequivocally advise the tenant prior to the termination date that the liquidated debt is being waived or forgiven as compensation. A tenant is only 'compensated' by the waiver of a debt at such time as the landlord waives that debt such that it is no longer recoverable against the tenant. That takes place only where the landlord clearly and unequivocally waives payment or forgives the debt.

26. In my view it is not unreasonable or unfair to require a landlord who wishes to waive a liquidated debt owing by the tenant to the landlord clearly and unequivocally advise the tenant prior to the termination date set out in the N12.

22. But in this case, the Landlord merely testified that he did not accept rent for October 2023. It was already two month's late by that time. Nor was the Tenant told, unequivocally, that the rent for October 2023 would be waved in lieu of one month's compensation, prior to the hearing.
23. I find that up to the hearing, one month's compensation or another rental unit acceptable to the Tenant, had not been offered.

## **2. Should the deadline for compensation be extended?**

24. The question becomes, should the deadline to pay the compensation be extended.
25. Clearly, in keeping with s. 190(1) of the Act and s. 56 of O. Reg. 516/06, the deadline for payment of compensation can be extended.
26. Although there is no specific rule dealing with extensions of time for compensation on an N12 application, the Landlord and Tenant Board Rules of Procedure, s. 16.4 provide the following factors for consideration upon a request to extend any time requirement under the RTA:

**16.4** The following factors may be considered in deciding requests to extend or shorten any time requirement under the RTA or these Rules:

- a. the length of the delay, and the reason for it;
- b. any prejudice a party may experience;
- c. whether any potential prejudice may be remedied;
- d. whether the request is made in good faith; and
- e. any other relevant factors.

27. As to the length of the delay, it would be about 2 month's time. The reason for the delay is unclear. All that can be said is that the Landlord knew he had to pay compensation, and yet he did not do so. It was his own fault for having sent the compensation to the wrong email address. Moreover, this was his sister he was providing the compensation to, not a tenant at arm's length. Nor did he provide any real reason for the delay.
28. As to prejudice, the Tenant should have been paid months ago. That said I cannot see any real prejudice in this matter, nor any real need to remedy any prejudice.
29. Then the question arises about whether the request is made in good faith.
30. As to this point, in my view, the Landlord had tried to pay compensation. He did send the compensation, albeit to the wrong email, and he did say he was waiving the rent for October 2023. As a result, I find that the application for more time to pay the compensation was not made in bad faith.
31. As a result, I will extend the time limit to pay the compensation.

**3. Did the purchaser of the rental unit, in good faith require possession of the rental unit for the purpose of residential occupation?**

32. The Purchaser, the Landlord's daughter, testified that she had lots of furniture at her dad's house and that she intended to move into the unit and could do so immediately. She is 29, and she lives with her dad. She wants to start a family by moving out.
33. The Purchaser testified, on cross examination, that she got the money for the purchase from her job at the YMCA. As to the mortgage, she said her father is helping her, and is holding the mortgage for her.
34. The Tenant's daughter saw the Purchaser at a concert a week before the hearing, where the Purchaser purportedly said: "*all I know is that I have to move in*". Although this is hearsay, as it was provided by the Tenant, whom I found credible, it does shed light on the underlying reality of this transaction.

35. I am entitled to look at the real substance of the transaction between the parties: The Act provides at s. 202:

**Findings of Board**

**202** (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

36. The Purchaser testified that's she did not pay a deposit.

37. The Purchaser was not altogether clear on when completion was to take place, or the terms of the sale and purchase.

38. The real estate agent was actually the mother of the purchaser.

39. The Purchaser was asked, why was the house listed for \$485,000 but sold to the Purchaser for only \$275,000, to which she said, that was the money she paid for it.

40. As for the agreement of purchase and sale, the Purchaser is to pay the balance of the purchase price on completion. The mortgage is interest free, and it is for one year after which time the entire principle balance is payable.

41. The transfer was also in evidence. The same solicitor acted for both parties on the transfer, one Paul Vandenbosch.

42. I would also note that the actual vendor was not the Landlord, but a company named 1086759 Ontario Inc, the President of which is the Landlord.

43. In my view, this was not a purchase and sale at arm's length for the following reasons:

- The parties did not have separate legal representation
- The purchase price was well below the list price
- The parties are related, being father and daughter • No deposit was paid
- The mortgage had to be paid off in full in one year
- The mortgage is interest free and the mortgagee is the vendor/Landlord
- The daughter appears to have been acting out a pre-determined role in this transaction, as per her comment to her cousin

44. I find that this is not a genuine purchase and sale between the Landlord and the Purchaser.

45. I have already noted above that there is a dispute between the parties over the home of their mother, which precipitated this application.

46. Further, the Tenant testified that the Landlord purchased the home for the Tenant some four years ago. At the time, she was living in public London housing. The Landlord said “*let’s find you a house*”. She had been in a housing unit for some 11 years before that. Her rent was \$800. He asked her if she could afford to pay more. She then said that she could pay \$1,000. He said he was not making money on his assets, so she would be helping him out with the higher rent. He then said, “*you can live there till you die*”.
47. The Tenant asked the Landlord only one question in cross examination, “*did you promise me I could live in the house until I die*”, to which he replied “no”.
48. I prefer the Tenant’s evidence here. I found the Tenant to be a credible witness. She presented the background to the case in a clear manner, and simply presented the facts without embellishment or exaggeration.
49. I simply do not accept that the Landlord did not make the offer to the Tenant that she could live in the house till she dies. I have already found the Landlord not credible with his evidence on how he got the Tenant’s alleged email. I also do not believe that he did not offer the home to the Tenant for life.
50. In my view, the sham nature of the sale and purchase, the fact that there is a dispute over the mother’s home and that the Landlord has taken the purchaser to court, coupled with the fact that he offered the unit to the Tenant for life, and is now reneging on that agreement, leads me to believe that this purchase is a sham and that the purchaser does not require possession of the rental unit for residential occupation. Added to that I would note that the daughter did not indicate any pressing need to move into the house, and thus I find she has failed to establish that she “*requires the unit*”.
51. I find that N12 was brought in retaliation against the Tenant, and that the Purchaser is not a good faith purchaser who requires possession of the rental unit.

#### **4. Relief from eviction**

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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.

52. In my view, it would not be fair to grant the application.
53. My reasons for this have been set out above, but in summary:
  - The purchase and sale was not a genuine arm’s length transaction and appears to have been brought due to the legal battles between the parties in retaliation
  - The Landlord promised that the Tenant could live in the house for the rest of her life, and has brought this application to defeat that promise
54. Moreover, the daughter is very young and has no real need of the unit. She is living with her father and appears well provided for.

55. The Tenant on the other hand, gave up her public housing to move into this house, when her brother provided that she could have the house for life.
56. Now he is going back on that promise and is trying to evict her.
57. In my view, it is clearly not fair to allow him to do so.
58. If I am wrong in my findings that the purchaser does not in good faith require possession of the residential complex or the unit for the purpose of residential occupation, then I would still deny eviction under s. 83(1)(a) for the reasons given.
59. As a result, the application for eviction must be denied.
60. The Tenant must re-pay any compensation paid to her.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is continued.
2. The application for eviction is rejected.
3. The Tenant must re-pay any compensation paid to her by December 15, 2023.

**November 30, 2023**

**Date Issued**

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James Campbell  
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.