



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

**Citation:** Zeng v Howarth, 2023 ONLTB 77065

**Date:** 2023-11-30

**File Number:** LTB-L-074117-22

**In the matter of:** 1, 1571 Bayview Avenue  
Toronto ON M4G3B5

**Between:**

Jun Hui Zeng Landlord

**And**

Jun Hui Zeng (the Landlord) and Adrian Howarth (the Tenant)  
'Landlord') applied for an order to terminate the tenancy and evict Adrian Howarth (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 November 15, 2023.

The Landlord's Legal Representatives Sean Gosnell and Jessica Karban attended the hearing. The Landlord's Spouse, Su Ai Yu attended the hearing as a witness for the Landlord.

The Tenant's Legal Representative, Allan Strader and the Tenant attended the hearing. Debbie Hermes a witness for the Tenant also attended the hearing.

**Determinations:**

1. In October of 2020, the Landlord retained an advisor as they required the rental unit for their own personal use. The advisor served the Tenant an N12 notice of termination. The Landlord filed an L2 application with the Board on November 4, 2020. The termination date set out in this N12 notice of termination was December 31, 2020.
2. The Landlord was not advised by their advisor that they could not serve an N12 notice of termination as the rental unit was owned by a corporation. The Landlord discovered this only a few days prior to the scheduled hearing with the Board, that was to take place on June 29, 2021. After the Landlord was made aware of this issue, they immediately hired

a Legal Representative and the Landlord withdrew the application and the June 29, 2021, hearing was cancelled.

3. As a result, after discovering this requirement the corporation arranged to transfer part of its interest in the property to the Landlord, Jun Hui Zheng. The Landlord retained a Legal Representative to handle all aspects of the transaction. There was a registered transfer by **File Number**: LTB-L-074117-22

which the Landlord, Jun Hui Zheng received a five percent ownership interest in the property effective January 2022. The Landlord provided copies of a) resolution of the shareholders and board of directors of the company b) provincial and municipal land transfer tax statements c) registered transfer of title.

4. The Landlord served the Tenant with an N12 notice on November 30, 2022, with a termination date of February 28, 2023, for Landlord's own use.
5. The Landlord's spouse, Su Ai Yu, provided an affidavit dated November 3, 2023, affirming the information from Paragraph 1-4 of this order.
6. The Landlord waived the lawful monthly rent for January 2023, to satisfy the requirement of the one month's compensation. The Landlord was in receipt of a post-dated cheque for January 2023, which was not cashed by the Landlord. It was undisputed by the Tenant that the cheque was not cashed for the lawful rent owing for January 2023.

#### Analysis

7. Subsection 48 (5) of the Act states:

This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

- a) the rental unit is owned in whole or in part by an individual; and
- b) the landlord is an individual

8. Therefore, pursuant to subsection 48(5)(b), only a landlord which is an individual is authorized to serve a tenant with an N12 Notice of Termination on the ground that the landlord in good faith requires possession of the rental unit for the purpose of residential occupation.
9. I accept that at the time the N12 notice was served on November 30, 2022, the rental unit was owned in part by the Landlord, Jun Hui Zeng and the Landlord is an individual.
10. Section 202 of the Act states:

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.

11. In this case, it was the Landlords evidence that when the original N12 notice, with a termination date of December 30, 2020, was served to the Tenant and the Landlord became aware that they could not serve an N12 notice, as the rental unit was owned by a **File Number: LTB-L-074117-22**

corporation, they immediately contacted a lawyer to transfer five percent of shares to the Landlord, Jun Hui Zeng, in order to meet the requirements under section 48 of the Act.

12. I recognize that the definition of "landlord" in section 2(1) of the Act includes an owner of a rental unit. The Landlord, Jun Hui Zeng and the Landlord's spouse, Su Ai Yu bought the property in 2016 and were the only shareholders, which was affirmed in the affidavit of Su Ai Yu. The Landlord, Jun Hui Zeng acquired his ownership in the rental unit from a corporation that he controls with his wife for the sole purpose of being able to evict the Tenants. This interpretation is consistent with the intent of section 48(5) of the Act, which is to deny corporate Landlord's the right to evict Tenant's for Landlord's own use applications.
13. I find that the real substance of the transfer was to evade the Act's prohibition on corporate Landlord's serving N12's under section 48(5) and that this was not done in good faith.
14. This order contains all reasons for the decision and no other reasons will be issued.

**It is ordered that:**

1. The Landlord's application is dismissed.
2. On or before December 7, 2023, the Tenant will return to the Landlord the required one month's compensation that was paid to him for this application.
3. If the Tenant does not pay the Landlord the full amount owing on or before December 7, 2023, they will start to owe interest. This will be simple interest calculated from December 8, 2023 at 7% annually on the outstanding balance.

**November 30, 2023**

**Date Issued**

**Trish Carson**

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.

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