



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

**Citation:** KS 700 Bay Street Inc c/o BentallGreenOak (Canada) LP v Ine, 2023 ONLTB 74531

**Date:** 2023-11-20

**File Number:** LTB-L-024751-23

**In the matter of:** 2205, 77 GERRARD ST W  
TORONTO ON M5G2A1

**Between:** KS 700 Bay Street Inc c/o BentallGreenOak (Canada) LP Landlord

**And**

Villiase Oritsemunoyo Ine Tenants  
Darius Mwesigwa Itaagi  
Chukwuma Ebubechi Kanu

KS 700 Bay Street Inc c/o BentallGreenOak (Canada) LP (the 'Landlord') applied for an order to terminate the tenancy and evict Villiase Oritsemunoyo Ine, Darius Mwesigwa Itaagi and Chukwuma Ebubechi Kanu (the 'Tenants') because the Tenants have been persistently late in paying the Tenants' rent. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on November 1, 2023.

The Landlord's agent, Samuel Hui, the Landlord's representative, Faith McGregor, and the Tenants Darius Mwesigwa Itaagi ("Itaagi") and Chukwuma Ebubechi Kanu ("Kanu") attended the hearing.

**Preliminary Issues:**

1. At the outset of the hearing, the Landlord explained that the Tenants had signed and served an N9 notice terminating the tenancy as of November 30, 2023, and that the Landlord had acknowledged and accepted the N9 in writing. The Landlord asked that the tenancy be terminated on the basis of the N9, which was not relief sought in the Landlord's L2 application before me today (the 'L2 Application').
2. The Tenants agreed that they had signed and served the N9 notice, but indicated that they wished to withdraw the N9; and that in any event, that the tenancy should not be terminated on the basis of the L2 Application.

3. As a result, there are three separate issues that I need to determine:
  - a) Can, and if so should, the Landlord be permitted to amend its application for the purpose of seeking a termination and eviction on the basis of the N9?
  - b) If the answer above is yes, should the tenancy be terminated and eviction ordered on the basis of the N9?
  - c) If the answer to either of the above is no, is the Landlord entitled to relief on the L2 Application, and if so, what relief?

**Determinations:**

**Factual Background**

4. Villiasé Oritsemunoyo Ine (“Ine”), Itaagi, and Kanu are joint tenants in the unit. The tenancy began on May 1, 2019 for a term of one year under the terms of a written lease, and since May 1, 2020, has continued on a month-to-month tenancy.
5. Rent is due on the first day of the month. The Landlord’s evidence reveals that the Tenants have not paid their rent on time since late 2019. Further, that since late 2022, their rent has been in arrears. As of the date of the hearing, the arrears stood at \$8,677.48. That is a significant amount.
6. The Tenants concede that they have not paid rent on time, and that they have fallen into arrears. Itaagi and Kanu, who did appear and testified, explained that there were two reasons for their failures to comply with the payment terms in the lease: first, both had been working in part-time jobs, and as a result they had uncertain income; and second, that Ine (who did not appear) had failed to contribute his fair share of the rent.
7. Itaagi and Kanu also testified that they now expected that this would change:
  - a) Both of them have full time jobs, and the revenue from those jobs is sufficient to pay their share of the rent going forward;
  - b) Inu has now left, but he has assured them that he will pay them, or the Landlord, a lump sum in an amount sufficient to clear the entire arrears by the end of November 2023; and
  - c) Itaagi and Kanu have located a new person to live with them, and they are satisfied that he has a steady and adequate source of income to permit him to pay his share of the rent going forward.
8. Itaagi and Kanu also testified that their prior situation is what prompted them to sign and serve the N9, which they did on August 28, 2023. At that time, they did not see how they could reasonably continue to pay rent due, and so decided that terminating the tenancy was their only reasonable option. However, with their changed financial circumstances, as

set out above, they no longer feel that terminating the tenancy is necessary. Now that they can afford to stay, they want to. They ask to withdraw their N9 for that reason.

9. The Landlord submits that the tenancy is a joint tenancy, and as such, all of the Tenants are jointly responsible for the late payment of rent and arrears, regardless of whether it was actually as a result of the Landlord's failure to contribute or not.

**Can the Landlord Seek to Terminate the Tenancy, based on the N9, at this Hearing?**

10. Section 47 of the *Residential Tenancies Act, 2006* (the 'Act') permits a Tenant to terminate a tenancy by providing notice to the Landlord in accordance with s. 44 of the Act. The form adopted by the Board to affect such a notice is an N9.
11. A Landlord can apply, pursuant to s. 77 of the Act, for termination of a tenancy and eviction if the tenant has served an N9, without notice to the tenant. Normally, that is done on a different form of application, an L3 application.
12. The Landlord and the Tenant were before me today. They appeared as a result of the L2 Application, which makes no reference to the N9 or the Landlord's request to terminate the tenancy and evict the Tenants for that reason. The Landlord now asks to amend the application to include that relief.
13. Amendments to applications are governed by rule 15.4 of the Board's Rules of Procedure. It provides that amendments may be permitted in a hearing if the Board is satisfied that "the amendment is appropriate, would not prejudice any party and is consistent with a fair and expeditious proceeding."
14. I permit the Landlord to amend the application to seek termination and eviction based on the N9.
15. The amendment is appropriate because the Tenants clearly served an N9 notice. There is no prejudice to the Tenants because, if the Landlord had proceeded in the normal course, they would have received no notice of the Landlord's application; here, they did have an opportunity to address the Landlord's request following on from the N9. Allowing the application is fair, in that the Tenants did have an opportunity to respond, and it is expeditious, because it avoids the costs and waste of resources of having a fresh hearing, with or without notice, to determine the Landlord's application, further to the N9, separately.
16. Accordingly, the application is amended.

**Should the tenancy be terminated and eviction ordered on the basis of the N9?**

17. In a normal N9 situation, termination and eviction following on an N9 can be a two-step process, done in separate attendances before the Board:

- a) Subsection 77(4) of the Act provides that on the Landlord's application without notice "the Board may make an order terminating the tenancy and evicting the tenant [emphasis added]".
  - b) If the Board grants the Landlord's application, the Tenant can move to set it aside. On that motion, subsection 77(8)(b) requires that, "the Board shall ... make an order setting aside the [termination and eviction], if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so."
18. This is not a normal N9 situation. Here, these two steps are being combined at a single hearing. I conclude that on this application, as amended, the proper way for me to determine the appropriate remedy is as follows:
- a) First, to determine whether the Landlord is entitled to have the tenancy terminated and the Tenants evicted on the basis of the N9; and, notwithstanding the result of that first step
  - b) Second, not order termination and eviction if I am satisfied, having regard to all the circumstances, that it would not be unfair to do so.
19. Here, I find that the Landlord is entitled to have the tenancy terminated and the Tenant evicted on the basis of the N9. The Tenants agree that they signed it and sent it to the Landlord. The Landlord clearly received it.
20. However, I also find that it would not be unfair if I do not order termination and eviction. The circumstances are that the Tenants have sought to withdraw their N9. The explanation that they have given is reasonable. Namely, that at a time when they could not afford the rent, they made the difficult decision to tell the Landlord that they wanted to end the tenancy. However, their financial circumstances have now changed, and they reasonably believe that they can afford to continue living in the unit.
21. The Landlord made no submissions and provided no evidence that it would suffer any prejudice if the tenancy continues.
22. Accordingly, I decline to order the tenancy terminated as a consequence of the N9.

### **Landlord's L2 Application**

23. The Tenants were in possession of the rental unit on the date the application was filed.
24. On February 17, 2023, the Landlord gave the Tenants an N8 notice of termination alleging persistent late payment of rent.
25. As set out above, and as conceded by the Tenants, the Tenants have persistently failed to pay the rent on the date it was due.
26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of Act, and find that it would not be unfair to grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. As

set out above, the Tenants have provided a reasonable explanation why the rent has been paid late, have an explanation for why it would be reasonable to expect that they would be able to pay the rent as it comes due going forward, and have a reasonable expectation for why they should be able to satisfy all outstanding arrears.

**It is ordered that:**

1. The Landlord's application is amended to permit them to seek termination and eviction on the basis of the N9.
2. I have exercised my discretion not to order termination and eviction on the on the basis of the N9.
3. The tenancy between the Landlord and the Tenants continues if the Tenants meet the following conditions:
  - a) The Tenants shall pay the lawful rent by the first day of every month for a period of 12 months, beginning December 1, 2023, and ending November 1, 2024.
4. If the Tenants fail to comply with the conditions set out in paragraph 1 of this order, the Landlord may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenants. The Landlord must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenants.
5. The Tenant shall pay the Landlord's filing fee for this application, being \$186.00, on or before November 30, 2023.
6. If the Tenant does not pay the Landlord any amount due within 10 days of the making of this order, the Tenant will start to owe interest. This will be simple interest calculated from the 11<sup>th</sup> day after this order is made, at 7.00% annually on the balance outstanding.

**November 20, 2023**

**Date Issued**

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Jonathan Rosenstein

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.