



## **Order under Subsection 135 Residential Tenancies Act, 2006**

**Citation:** Patel v Akbar, 2023 ONLTB 71133

**Date:** 2023-11-08

**File Number:** LTB-T-009456-23

**In the matter of:** 2452 ROSEDROP PATH  
OSHAWA ON L1L0L2

**Between:** Kathan Patel Tenant

**And**

Abbas Akbar Landlord

Kathan Patel (the 'Tenant') applied for an order determining that Abbas Akbar (the 'Landlord') collected or retained money illegally.

This application was heard by videoconference on October 18, 2023.

Only the Tenant attended the hearing.

As of 1:20pm, the Landlord was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Tenant's evidence.

### **Determinations:**

1. As explained below, the Tenant did not prove the allegations contained in the application on a balance of probabilities. Therefore, the application is dismissed.
2. The Tenant's T1 application claims the Landlord gave them an N12 notice and did not pay them compensation by the termination date. At the hearing, the Tenant acknowledged that the Landlord never served them a formal written N12 notice and only demanded them to leave by phone call and WhatsApp text messages.
3. Section 49 of the *Residential Tenancies Act, 2006* (the "Act") states:

**49 (1)** A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential

complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

Order Page 1 of 3  
File Number: LTB-T-009456-23

2023 ONLTB 71133 (CanLII)

- (a) the purchaser;
- (b) the purchaser's spouse;
- (c) a child or parent of the purchaser or the purchaser's spouse; or
- (d) a person who provides or will provide care services to the purchaser, the purchaser's spouse, or a child or parent of the purchaser or the purchaser's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

4. Section 49.1 of the Act states:

**49.1** (1) A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

- (a) the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under subsection 49 (1) or (2); and
- (b) the notice of termination is given on or after the day the *Protecting Tenants and Strengthening Community Housing Act, 2020* receives Royal Assent.

5. While the Landlord never gave the Tenant a formal written N12 notice of termination, sections 202 and 212 of the Act state:

**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.

**212** Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient. [emphasis added]

6. These sections were applied in CET-74019-18 (Re), 2018 CanLII 88562 (ON LTB) at paras 4-6 to find that an email was in substantial compliance with an N12 notice of termination under s. 48. However, this case involved an N12 notice for the landlord's own use (rather than for a purchaser's use as in this application) and the email was submitted into evidence so substantial compliance could be ascertained.
7. The facts of this application are more analogous to CET-76967-18-AM (Re), 2018 CanLII 140427 (ON LTB) where the Board Member stated at paras 16-18:

16. Subsection 49(1) of the Act contemplated that a landlord has already entered into an agreement of purchase and sale and that the purchaser (or spouse, child, parent,

**File Number:** LTB-T-009456-23

spouse's parent) requires the unit for the purpose of residential occupancy before this type of notice can be served.

17. Given that, I am not satisfied that the email the Tenants received amounted to a notice pursuant to this subsection. The email does not contain all the material elements required by subsection 49(1) of the Act. The email simply inferred that the Landlord intended to sell the premises, given that they state they can place a 'for sale' sign and show the unit to prospective buyers.
18. A cause of action cannot be established when there is no certain date as to when the sale of the property would be completed thus precipitating when the purchaser would require possession of the unit for the purposes of residential occupancy. There is no starting point. It would be absurd to find that a notice simply stating an intent to sell a rental unit is sufficient for a bad faith argument under section 57 of the Act, as the unit may not sell for years. [emphasis added]
8. While ss. 202 and 212 were not considered in this case, it is clear that the Member would not have found substantial compliance as there was merely an intention to sell the property rather than an actual purchaser who required possession of the rental unit.
9. I cannot apply ss. 202 and 212 to this application because an intention to sell the rental unit cannot establish substantial compliance with section 49(1) of the Act which requires an actual purchaser who signed a purchase and sale agreement and requires possession of the rental unit.
10. In addition, the Tenant did not submit the Landlord's text messages and notice to leave into evidence. Therefore, I am unable to ascertain whether there is substantial compliance as in the first case cited above where the email was submitted into evidence.

**It is ordered that:**

1. The Tenant's application is dismissed.

**November 8, 2023**  
**Date Issued**

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Elan Shemtov  
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.