



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

Citation: Hewitt v Bateman, 2023 ONLTB 71449

Date: 2023-11-03

File Number: LTB-L-019179-23

In the matter of: Basement, 83 LORNE AVE TRENTON
ON K8V5B8

Between: Glenford Hewitt Landlord

And

Nicholas Bateman Tenants
Nadalee Hartmann

Glenford Hewitt (the 'Landlord') applied for an order to terminate the tenancy and evict Nicholas Bateman and Nadalee Hartmann (the 'Tenants') 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 June 29, 2023.

The Landlord and the Tenants 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. Therefore, the application is dismissed.
2. The Tenants will be ordered to repay to the Landlord \$954.31, which represents the amount of compensation paid to the Tenants.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. The rental unit is the basement apartment of a house located in Trenton, Ontario, consisting of 2 bedrooms, 1 bathroom, a kitchen and a living room.

N12 Notice of Termination

5. On February 27, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
6. On March 4, 2023, the Landlord compensated the Tenants \$954.31, which is equal to one month's rent.

Landlord's Testimony

7. The Landlord testified that he intends move into the rental unit as soon as the Tenants move out of the unit. He currently resides in Oshawa, Ontario and needs to relocate to Trenton, Ontario for work. He is an independent contractor with work sites from the Greater Toronto Area to Eastern Ontario.
8. The Landlord is a part-owner of his current Oshawa residence and he is leaving that arrangement for personal reasons. He has owned the rental building in Trenton since approximately 2019.
9. The Landlord acknowledged that there were maintenance issues in the rental unit in January and February 2023, but denied that these issues were the reason he gave the Tenants an N12 Notice on February 27, 2023.

Tenants' Testimony

10. The Tenants testified that they believe that the Landlord gave them the N12 Notice in bad faith as retaliation for the maintenance issues in the unit and for reporting the issues to the Quinte West Property Standards Office.
11. The Tenants described the following timeline:
 1. January 14, 2023: sewage began to collect in the drains in the shower, sink and the toilet. The Landlord was informed on the same day.
 2. January 15 - 21, 2023: the drains continued to back up intermittently.
 3. January 21, 2023: the Landlord was informed of the ongoing situation.
 4. January 24, 2023: the Landlord attended the unit to unclog the toilet.
 5. January 24 - 27, 2023: the shower would not drain, leaving water standing in the shower base. The Landlord was informed of the situation on the 24th, 25th and 27th.
 6. January 30, 2023: the Tenants communicated with the Quinte West Property Standards Office.

7. February 1, 2023: the unit was inspected by the Property Standards Officer, and a report was filed, with a compliance date of March 13, 2023. The Order to Remedy noted deficiencies in walls and floors of the unit, bathroom walls, plumbing, and the unit access door (detailed below, in paragraph 13)
8. February 24, 2023: the Landlord attended the unit to address the deficiencies in the enforcement report.
9. February 27, 2023: the Landlord served the Tenants the N12 Notice.
10. March 2, 2023: the unit was re-inspected by the Property Standards Officer, the order compliance date was extended to April 13, 2023.
11. March 7, 2023: the Tenants were notified that the Landlord had hired a contractor to complete the work required.
12. March 31, 2023: the work was completed, and the Property Standards Officer was satisfied the work was complete.
12. The Tenants submitted pictures of the unit showing many holes in the ceiling, and dirty water standing in the shower, in the toilet and on the floor of the bathroom.
13. The Order to Remedy was addressed to the Landlord and to a second person, both at the same address in Oshawa. The Order detailed the following deficiencies:
 1. Ensure that every floor, wall and ceiling is maintained in a clean and sanitary condition.
 2. Ensure that every floor is reasonably smooth and level and is maintained...
 3. Ensure that trim is installed where required and is maintained...
 4. Ensure that all bathroom walls surrounding the shower are impervious to water.
 5. Ensure that all plumbing, including every drain,...and other plumbing fixtures...maintained in good condition...
 6. Ensure that all doors are maintained...
14. There was no evidence submitted regarding the scope of work that was completed or that every deficiency was remedied.

Analysis

15. The N12 Notice was served pursuant to section 48(1)(a) of the *Residential Tenancies Act, 2006* ("Act") which states:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

(a) the landlord

16. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

“the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...”
17. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlord's motives are “largely irrelevant”.
18. However, in *Fava v. Harrison*, (2014 ONSC 3352), the Divisional Court held that although the Landlord's motives may be “largely irrelevant” that “does not meant that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”
19. The uncontested evidence establishes that the Landlord gave the Tenants an N12 Notice on February 27, 2023, approximately one month after the Tenants reported the condition of their rental unit to the Quinte West Property Standards Office. The Landlord was required to perform extensive work in the rental unit as a result of the Tenants' complaint. Given this timing of these events, I find that a reasonable inference can be drawn that the actual reason the Landlord served the Tenants with the N12 Notice was because the unit required a significant monetary investment and not because the Landlord intended to occupy the unit.
20. Although the Landlord testified that he intends to move into the rental unit because it is located closer to his work, there was no evidence that the location of his work sites had substantially changed recently. The Landlord did not provide any additional testimony or evidence to support his claim that he was leaving the Oshawa residence for personal reasons.
21. On the basis of the evidence before me and on the balance of probabilities, I do not find that the Landlord gave the N12 Notice to the Tenants in good faith. I find that the Landlord likely served the notice as retaliation because the Tenants involved Quinte West Property Standards Office and not because the Landlord genuinely intended to move into the rental unit.
22. Even if the Landlord had established a genuine intention to live in the rental unit, the application would still be dismissed under section 83(3)(b) or (c) of the Act as I have found that the reason it was served was because the Tenants involved the Quinte West Property Standards Office:

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

- (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
- (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights; ...

23. The language of s. 83(3) mandates refusal where a member is satisfied that any one of the circumstances set out in subsections (a)-(e) apply. In this case, the Tenants reported the condition of the rental unit to a government authority dealing with health and safety standards and the Landlord served them with a N12 notice in retaliation.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenants shall pay to the Landlord \$954.31, which represents the amount of the compensation they received.
3. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.

November 3, 2023

Date Issued

Heather Kenny

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.