



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

Citation: Jin v Torres, 2023 ONLTB 67916

Date: 2023-10-26

File Number: LTB-L-044298-22

In the matter of: 2912, 85 QUEENS WHARF RD
TORONTO ON M5V0J9

Between: Yuan Jin Landlord

And

Justine Torres Tenant
Elena Belluzzi

Yuan Jin (the 'Landlord') applied for an order to terminate the tenancy and evict Justine Torres and Elena Belluzzi (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 October 4, 2023. The Landlord and the Landlord's representative, Elaine Page, attended the hearing. Tenant Justine Torres also attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated and the Tenants must move out of the rental unit on or before January 15, 2024.

N12 Notice of Termination – Landlord's Own Use

2. On July 30, 2022, the Landlord served the Tenants an N12 notice of termination with a termination date of September 30, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of her own residential occupation. The Landlord applied to the Board to terminate this tenancy on August 8, 2022. I find that the Landlord's application complied with s. 69(1) of the *Residential Tenancies Act, 2006* (the 'Act').
3. The Tenants were in possession of the rental unit on the date the application was filed.

Compensation

4. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In

addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.

5. The Landlord testified that she paid the Tenants one month's rent compensation of \$2,550.00 through an e-transfer in May 2022. The Tenant testified that he received the e-transfer of \$2,550.00 from the Landlord in May 2022, and that this amount represented one month's rent compensation. Both parties agreed that the monthly rent in May 2022 was \$2,550.00.
6. On the basis of the evidence provided, I am satisfied that the Landlord met her obligation to pay the Tenants compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act, by providing an e-transfer payment to the Tenants of \$2,550.00 in May 2022 – before the date of termination of September 30, 2022.
7. The Landlord testified further that the rent increased to \$2,580.00 monthly on July 1, 2022, and therefore she provided the Tenants with an additional compensation payment of \$30.00 via e-transfer in September 2023. The Tenant testified that he received the e-transfer of \$30.00 from the Landlord in September 2023.

Good Faith

8. The N12 was served pursuant to s. 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 the Landlord required, in good faith, the unit for residential use.
9. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice.
10. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property.

Landlord's Evidence

11. The Landlord testified that in May 2022 she received a job offer in Toronto from Onex Corporation, and moved from Victoria, B.C. to Toronto to start the new job on August 2, 2022. The Landlord remarked that her new job requires a home office set-up, and the rental unit has a perfect floor plan for a home office, and that is the primary reason she wants to reside in the unit. The Landlord stated that she currently rents another unit in Toronto and works from home 50% of the time with her employment at Onex Corporation.
12. The Landlord testified further that in addition to owning the rental unit, she owns a second unit in Toronto at 5303-11 Brunel Court. The Landlord noted however that this unit has

only one bedroom and a den, and does not have sufficient space for a home office. She added that the unit is also currently rented.

13. The Landlord acknowledged that she has no family members that reside in Toronto.
14. The Landlord testified further that in early March 2022, before she received the Onex Corporation job offer and before she served the N12, Tenant Justine Torres approached her about having a new lease that added a new tenant to the lease in place of Tenant Elena Belluzzi. The Landlord stated that she contemplated the Tenant's request, and suggested a new lease with a rent increase of \$390.00. The Landlord noted that the Tenant declined, the new lease and the \$390.00 rent increase were never implemented, and the rent never increased more than the yearly guideline rate. The Landlord asserted that the Tenant's refusal to sign a new lease, a lease she had not initiated in the first place, had no influence on her desire to move into the unit.
15. The Landlord's representative submitted that on May 13, 2022 the Landlord served a previous N12 to the Tenants for the Landlord's own use of the unit, with a termination date of August 1, 2022. However, the termination date on this N12 was not the end of the monthly term, and was therefore defective. Accordingly, no L2 application was filed on the basis of the previous N12, and the Landlord commenced the process again with the current N12. The representative remarked that the previous N12 was declared through an amendment to the L2 on September 27, 2023.
16. Pursuant to s. 72(1)(a) of the Act, the Landlord provided a signed declaration, dated April 12, 2023, declaring her intention to reside in the rental unit for her own personal use for a period of at least one year. The Landlord provided a second signed declaration, dated September 27, 2023, declaring her good faith intention to reside in the rental unit for her own personal use for a period of at least one year. In addition, during the hearing the Landlord testified that she in good faith intends to reside in the rental unit for a period of more than one year. I find that the Landlord has complied with the requirements of s. 72(1)(a) of the Act.
17. The Landlord testified further that the Tenants have resided in the unit since December 2020, and since that time her relationship with the Tenants has been good until she served the Tenants the N12.

Tenants' Evidence

18. The Tenant testified that he believes the Landlord did not serve the N12 in good faith. He explained that the Landlord tried to get a substantial rent increase for the unit through a new lease; however, when he declined the new lease and rent increase, two months later he was served the N12. The Tenant stated that the rental unit is an investment property for the Landlord and the Landlord is seeking to secure more rent from the unit, rather than use the unit for her personal residence.
19. The Tenant remarked that the Landlord owns another high-rise unit in Toronto at 5303-11 Brunel Court that she could move into, rather than displacing the two tenants in the rental unit.

Analysis

20. On the basis of the evidence provided, I am satisfied that the Landlord genuinely intends to use the rental unit for her own personal residence for at least one year. In this matter, I find the Landlord's evidence more compelling than the Tenants' evidence. I am satisfied that the Landlord's attempt to negotiate a new lease in March 2022, at the request of the Tenant, and the Tenant's refusal of the new lease on the basis of an above guideline rent increase, was not a determinant in the Landlord's decision to serve the N12. The Tenants did not establish that the Landlord intends to re-rent the unit at a higher rent when the tenancy is terminated.
21. I find that the Landlord served the N12 on the basis that she wants to reside in her unit that provides her with the optimum space for a home office for her new job in Toronto, and the rental unit is more suitable in this regard than her other property at 5303-11 Brunel Court.
22. On the basis of the evidence provided, I am also satisfied that the Landlord's previous defective N12, and her subsequent serving of a valid N12, does not demonstrate bad faith from the Landlord with respect to the Landlord's current application, but rather represents the timely correction of an error to ensure the expeditious consideration of her L2 application.
23. For the reasons provided in paragraphs 20 through 22, I therefore find that 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.

Daily Compensation and Rent Deposit

24. The Landlord did not claim compensation in the L2 application for each day the Tenants remained in the unit after the termination date; therefore, the status of the rent deposit is not a consideration of this L2 application.

Relief from Eviction

25. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until January 15, 2024 pursuant to subsection 83(1)(b) of the Act.
26. The Tenant testified that he has been living in the rental unit for almost three years and finds the location of the unit convenient to visit his parents who live nearby. The Tenant noted that his father has cancer, and that he has been assisting his father with his medical treatments that take place in the neighbourhood. The Tenant noted that a move from the unit would likely result in living a greater distance from his father and therefore disrupt the support that he provides to his father.
27. The Tenant stated that he has been looking for alternate rental units, but has found it difficult to find similar units without paying much higher rent. The Tenant asserted that he would like to retain his tenancy, but if the tenancy is terminated he required a six-month delay in any eviction.
28. I find that, although the Landlord in good faith requires possession of her rental unit for her own residential occupation, postponing the Tenants' eviction until January 15, 2024 will

provide the Tenants with more time to secure another rental unit that is suitable for their financial constraints and on-going family support commitments. I find that providing the Tenants with complete eviction relief, or delaying the Tenants' eviction beyond January 15, 2024, would be unfair to the Landlord who seeks to reside in her unit as soon as possible.

29. I am satisfied that the eviction postponement to January 15, 2024 would not be financially unfair to the Landlord given that no financial considerations of the Landlord were raised during the hearing. I am also satisfied that the Landlord's move to the rental unit is not immediately time critical. For these reasons, I therefore find that the Landlord's delayed move to the rental unit would not be unfair to the Landlord, while providing significant eviction relief to the Tenants.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 15, 2024.
2. If the unit is not vacated on or before January 15, 2024, then starting January 16, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after January 16, 2024.

October 26, 2023

Date Issued

Frank Ebner

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on July 15, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.