



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

Citation: Fernandez v Dennis, 2023 ONLTB 55959

Date: 2023-08-09

File Number: LTB-L-044227-22

In the matter of: 1, 47 OSIJEK CRES BRANTFORD
ON N3P1Z4

Between: Mary Fernandez Landlords
Danny Fernandez

And

Dahlia Avia Dennis Tenant

Mary Fernandez and Danny Fernandez (the 'Landlords') applied for an order to terminate the tenancy and evict Dahlia Avia Dennis (the 'Tenant') because:

- the Tenant has been persistently late in paying the Tenant's rent; and
- the Landlords have entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on April 6, 2023.

The Landlord, Mary Fernandez, the Landlords' Legal Representative, Krystal Campbell, and the Tenant attended the hearing. Hoang Doan appeared as a witness for the Landlord. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

N8 Notice of Termination ('N8 Notice')

1. Based on the evidence provided by the Landlord and testimony provided by the Tenant, I find that the Tenant as persistently failed to pay the rent on the date it was due.
2. For the reasons that follow, the Landlords' application for eviction is denied and a conditional order shall issue.
3. On June 27, 2022, the Landlord gave the Tenant an N8 Notice. The N8 notice contained the following allegations:
 - the tenant has not been consistent in paying her rent on time each month
 - for September, October and December 2021, the tenant was paying the rent late and splitting it into two payments
 - for January, February, March, April, May and June 2022, the tenant has not been consistent in paying her rent on time and has been making two or more payments on random days in the month.
4. In her testimony, the Landlord stated that on one occasion she permitted the Tenant to pay the rent in two payments due to the Tenant's financial status however this was not an acceptance of the monthly rent to be split on an ongoing basis. She stated she reminded the Tenant at the beginning of each month the rent was due on the first. She further stated the rent being paid late caused her financial hardship as the late payments from the Tenant forced her to cover the mortgage using her own funds.
5. The Landlord's Legal Representative submitted a rental ledger as evidence. This rent ledger show that for the period of September 2021 to April 2023, the Tenant has paid a portion of the monthly rent on the first of the month and the balance on random days during the same month.
6. The Tenant testified she fell on hard times during the pandemic and could only pay the rent by splitting the payments on the first and twentieth of each month. She stated she stopped working in December 2021 and was unable to fulfil her obligation to pay the rent on time. She therefore split the rent payments as funds were available. She added she is currently employed and understands the rent is due on the first.
7. Since the Tenant has taken initiative to put herself in a better financial position and can pay the rent on time, I find it would not be unfair to make a conditional order pursuant to section 78 of the *Residential Tenancies Act, 2006* (the 'Act') in the circumstances.
8. Since the Landlord is successful on their application, I will also order that the Tenant pay to the Landlord \$186.00 for the cost of filing the application with the Board.

N12 Notice of Termination ('N12 Notice') – Purchaser's Own Use

9. On July 31, 2022, the Landlord gave the Tenant an N12 Notice with the termination date of September 30, 2022. The notice was given on behalf of the Purchaser who claims that they

require vacant possession of the rental unit for the purpose of residential occupation by Hoang Doan.

10. For the reasons that follow, this portion of the Landlords' application is dismissed.
11. The Landlords' N12 Notice is given under subsection 49(1) of the Act, which provides, in part:

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,

- (a) the purchaser [.]

12. Additionally, subsection 72(1)(a) and subsection 72(1.1) provide in part:

72 (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

- (a) a notice of termination under section 49, unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use.

(1.1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination given under section 48 before the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use.

13. The declaration signed by the purchaser does not provide all of the information required by subsection 72(1)(a) of the Act. In particular, to meet the requirements, the declaration must certify that the purchaser requires "the rental unit" for his or her own personal use. The declaration proffered by the Landlord does not provide this information. The declaration signed by Hoang Doan (the 'Purchaser') refers only to the purchase of the property with a closing date of December 5, 2022.
14. The hearing of the application was stood down to allow the Purchaser to attend the hearing to give viva voce evidence with respect to his intention for the rental unit.
15. The Purchaser testified he purchased the property for his parents to reside in. He stated his parents currently live in one of his rental units and it is his intention to sell his building in the

future thus his parents require a place to live. He stated he would not be moving into the rental unit nor did he ever intend to as he owns his own home. The rental unit was purchased for his parents to occupy.

16. Based on the evidence before me, I find the N12 Notice to be invalid. The N12 Notice clearly sets out that the Purchaser intends to move into the rental unit not the Purchaser's parents which is included as an option on the N12 Notice. The Purchaser testified he owns his own home and never had the intent to move into the rental unit. I find the evidence of the Purchaser contradicts the N12 Notice and as a result, this portion of the Landlords' application is denied.

Compensation

17. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022.
18. The Landlord testified the Tenant was provided with a bank draft in the amount of \$1,650.00 on September 30, 2022 by handing it to the Tenant. She stated this bank draft was cashed by the Tenant on October 14, 2022.
19. The Landlords' Legal Representative submitted a document provided by the Landlords' financial institution. This document confirms the bank draft was issued on September 26, 2022 and was cashed on October 14, 2022.
20. The Tenant did not deny receiving the bank draft but denied depositing it into her bank account. She stated she was still in possession of the bank draft.
21. Under section 73.1 of the Act, the Board may order the return of compensation paid to a tenant if the Board refuses to grant an eviction but where an application have been given under section 49.1. Despite the contradictory evidence of the Landlord and the Tenant, I find that the Landlords are entitled to the return of the compensation paid to the Tenant. If the Tenant is still in possession of the bank draft, it can be returned to the Landlords however if the bank draft has been cashed, the Tenant will be ordered to repay the funds to the Landlords.

It is ordered that:

N12 Notice

1. The Landlords' application as it relates to the N12 Notice is dismissed.
2. The Tenant shall pay to the Landlords, on or before August 20, 2023, the amount equal to one month's rent, which was give by the Landlords in satisfaction of the required compensation under section 49.1 of the Act.

3. If the Tenant does not pay the Landlords the full amount owing on or before August 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 21, 2023 at 6.00% annually on the balance outstanding

N8 Notice

4. The Landlords' application for eviction of the Tenant is denied on the condition that the Tenant pay the lawful monthly rent as it becomes due on or before the first day of each month commencing September 1, 2023 and continuing to the period ending August 31, 2024.
5. If the Tenant fails to comply with the conditions set out in paragraph 2 of this order, the Landlords may apply under section 78 of the Act for an order terminating the tenancy and evicting the Tenant. The Landlords must make the application within 30 days of a breach of a condition. This application is made to the LTB without notice to the Tenant.
6. The Tenant shall pay to the Landlords \$186.00 for the cost of filing the application with the Board.
7. If the Tenant does not pay the Landlords the full amount owing on or before August 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 21, 2023 at 6.00% annually on the balance outstanding.

August 9, 2023

_____ **Date Issued**

Susan Priest

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.