



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

Citation: Anton v Dawson, 2023 ONLTB 54398

Date: 2023-08-04

File Number: LTB-L-022339-23

In the matter of: 53 GLORY CRES
SCARBOROUGH ON M1E2B9

Between: Amir Anton Landlord

And

Matthew Dawson Tenant
Michelle Barber

Amir Anton (the 'Landlord') applied for an order to terminate the tenancy and evict Matthew Dawson and Michelle Barber (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on June 28, 2023.

The Landlord's agent David Anton, the Tenants and the Tenants' representative T. Heneghan 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 Landlord served the Tenants with an N12 notice of termination seeking termination of the tenancy for the purpose of residential occupation by the Landlord's child.
3. The termination date in the notice (the "N12 notice") was June 30, 2023. The N12 notice was served on March 14, 2023. The Landlord has satisfied the 60-day notice and "end of term or period" requirements of [s.48\(2\)](#) of the Residential Tenancies Act, 2006 (the "Act"), and I am satisfied that the Landlord has met the declaration requirement of s.72(1)(a) of the Act and the one month's compensation requirement of s. 48.1 of the Act.
4. In order to be successful in this application, the Landlord must satisfy the Board they require, *in good faith*, the rental unit for the purpose of residential occupation for at least one year by the Landlord's son. The relevant case law is clear that the test of good faith is a genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.)).

5. For the reasons that follow, I am not satisfied, on a balance of probabilities, that the N12 was served in good faith.
6. David Anton (DA) is the Landlord's son and testified his brother, Dylan Anton (DY) is getting married in August 2023 and thus, requires the rental unit for his personal use as he is currently living with his parents. DA noted the rental unit was the Landlord's family home growing up, and thus, DY has familiarity with the home and surrounding area.
7. The Tenants contest the Landlord's intent for the rental unit and submit the service of the Form N12 is retaliatory, in nature. By way of background, the Tenants have resided at the rental unit since 2017, alongside their two children, ages 17 and 16, and are in receipt of ODSP support.
8. While not directly relevant to the issue of genuine intent in this application, the Tenants submit the Landlord has demonstrated a pattern of breaching the Act throughout the tenancy: by collecting an additional security deposit at the time the rental unit was rented (i.e. the Landlord collected 1st last month's rent, plus an additional 2 month's rent); in 2019, by threatening to increase the rent if the Tenants did not pay \$2000 for installation of a new Air Conditioner unit; and, in September 2021, by demanding the Tenants pay an illegal rent increase of \$300/month, despite the maximum rent increase guideline being 0% (the parties agreed to a reduced increase of \$150/month).
9. The more relevant interaction as to the issue of genuine intent, however, occurred in August 2022. At that time, MB testified the Landlord and his son came to the rental unit and sought to increase the rent by an additional \$200/month, once again, an amount over and above the allowable rent increase guideline amount. MB testified the Landlord indicated at the time he hoped to have the Tenants reside at the rental unit for "many years". [emphasis added]. The Tenants also testified there was no mention of the Landlord's son getting married or wanting to move into the rental unit during this visit.
10. After receiving some advice as to their legal rights under the Act, the Tenants sent the Landlord follow-up text communications from August 18, 2022 stating:

"For 2022 the maximum allowed increase is 1.2% which would make your rent \$2327.60" adding, "my wife shouldn't have signed those checks (sic) yet", and "I'm willing to give you \$40 more a month which is more than your (sic) allowed",

11. The Landlord responded on that same day: "*No I'm sorry mat you can find another house you have 3 months from now*", to which the Tenant responded: "*You can only evict us if you and your family is moving in and we both know that's not the case*". The Landlord sent a further text communication on August 18, 2022, stating:

No need my friend I already talk with ur (sic) wife and I told her I will sell the house
[emphasis added]

12. On that same day and after further text communications, the Landlord appears to change course:

“No there are case like that too ask your wife I told her my son thinks to move in”

13. It was not disputed that one day later on August 19, 2022, the Landlord served the Tenants with a Form N12 (the “First N12”). Although the First N12 was not produced, service of this document was noted in the Landlord’s current L2 Application as File # LTB-L-047886-22, and the intended occupant listed was the Landlord’s son, DY. Given the timing of service of the First N12 – one day after the Tenant’s refusal to pay a higher rent – the Tenants understandably submit the service was retaliatory in nature.
14. While the surrounding circumstances, including the Landlord’s intent in serving the First N12 is not determinative in this application, the past actions and communications between the parties cannot be ignored.
15. The onus to prove the notice in this application was served in good faith rests with the Landlord. Although DA indicated his brother is getting married in August 2023, very little evidence was produced showing the Landlord’s apparent (retaliatory) intent in serving the First N12 was different than the Landlord’s intent in serving the current N12. I also note that neither the proposed occupant (DY), nor the Landlord were in attendance at the hearing to give evidence. Considering all the evidence, I am not satisfied on a balance of probabilities there is a good faith intention to occupy the unit for the purposes of residential occupation. The Landlord’s application fails the good faith requirement under [s.48\(1\)](#) of the [Act](#) and must be dismissed.
16. The Landlord provided the Tenants with one month’s rent compensation, in satisfaction of the one month’s rent compensation requirement under s.48.1 of the Act. Section 73.1 of the Act provides that if the Board refuses to grant an eviction order in an application where compensation has been given under section 48.1, the Board may order that the tenants pay back the compensation to the Landlord. I have given such relief in the order. The Tenants shall pay to the Landlord \$2300.00, which was given by the Landlord as the required compensation under s. 48.1.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenants shall pay to the Landlord \$2300.00, which was given by the Landlord to the Tenants as the required compensation under s. 48.1.

August 4, 2023
Date Issued

Peter Nicholson
 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.