



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

**Citation:** Mahad Mohamed v Ubah Roble, 2023 ONLTB 46413

**Date:** 2023-07-07

**File Number:** LTB-L-011740-23

**In the matter of:** 1405, 238 ALBION ROAD  
ETOBICOKE ON M9W6L4

**Between:** Mahad Mohamed Landlord

**And**

Ubah Roble Tenant

Mahad Mohamed (the 'Landlord') applied for an order to terminate the tenancy and evict Ubah Roble (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on June 13, 2023. The Landlord and the Landlord's representative, Letitia Webley, attended the hearing. The Tenant and the Tenant's representative, Ahmed Gelle, also attended the hearing.

**Preliminary Issue:**

1. The Tenant's representative submitted that the Landlord's N12 Notice of Termination is defective because the box "A person who provides or will provide care services to:" is not checked, but just the box within this section of the N12, "My parent" is checked. The representative contended that the N12 is not clear as to who will be moving into the rental unit.
2. The Tenant's representative acknowledged, however, that the Tenant understood from the N12 that the Landlord wanted to terminate the tenancy to permit a caregiver to move into the rental unit to provide care services to the Landlord's parent – specifically the Landlord's father.

3. The Landlord's representative acknowledged that the box on the N12 titled "*A person who provides or will provide care services to:*" should have been checked, and it was a clerical oversight that it was not checked; however, despite this omission the intent of the Landlord's N12 is clear, as evidenced by the Tenant's correct understanding of the N12.
4. The Landlord confirmed that he seeks to terminate the tenancy to enable his mother, Dubo Mohamed, to move into the rental unit to provide care services for his father, Ahmed Mohamed.
5. I find that the Landlord's N12, pursuant to s. 212 of the *Residential Tenancies Act, 2006* (the "Act"), substantially complies with the requirements of s. 43(2) of the Act given that it sufficiently sets out the reasons and details respecting the termination of the tenancy. I am satisfied that it is clear from the N12 that the Landlord seeks to terminate the tenancy pursuant to s. 48(1)(d) of the Act. I therefore find that the N12 is valid.

### **Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated and the Tenant must move out of the rental unit on or before September 30, 2023.

### **N12 Notice of Termination**

2. On January 21, 2023 the Landlord served the Tenant an N12 Notice of Termination with a termination date of March 31, 2023. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation for his mother, Dubo Mohamed, who will provide care services for his father, Ahmed Mohamed. The Landlord applied to the Board to terminate this tenancy on February 6, 2023. I find that the Landlord's application complied with s. 69(1) of the Act.

### **Compensation**

3. 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.

### Landlord's Evidence

4. The Landlord testified that on March 27, 2023 he mailed a cheque via express post to the

Tenant for \$1,575.00 representing one month's rent compensation. The Landlord testified that the Tenant never cashed the cheque, and he did not offer any further options of compensation to the Tenant.

### Tenant's Evidence

5. The Tenant testified that on March 29, 2023 she received a cheque from the Landlord for \$1,575.00; however, she did not cash the cheque out of fear that it would result in her eviction. The Tenant remarked that she still has the cheque in her possession.

### Analysis

6. I accept that s. 55.1 of the Act requires that a landlord compensate a tenant no later than the termination date set out in the applicable N12. However, a tenant cannot frustrate the ability of a landlord to provide compensation by refusing to accept compensation offered by a landlord, for example, by failing to cash a compensation cheque provided by the landlord.
7. On the basis of the evidence provided, I find that on March 29, 2023 the Landlord met his obligation to pay the Tenant compensation equal to one month's rent in accordance with s. 48.1 and s. 55.1 of the Act, by providing the Tenant with a cheque for \$1,575.00 before the termination date of March 31, 2023.
8. The Tenant's failure to cash the \$1,575.00 cheque does not invalidate the Landlord's service of the one month's rent compensation before the termination date. However, if the tenancy is terminated, the Tenant shall be compensated before the termination of the tenancy, pursuant to s. 83(4) of the Act. The Tenant may cash the compensation cheque at her discretion; however, if the cheque is stale dated, the Landlord will provide another cheque for \$1,575.00 to the Tenant.
9. Subsection 190(2) of the Act provides the Board with the jurisdiction to extend time requirements except for those identified in s. 56 of *Ontario Regulation 516/06* to the Act. Section 55.1 of the Act is not identified in s. 56 of the Regulation. Therefore, I am, to the extent necessary, exercising my discretion under s. 190(2) of the Act to extend the time for the Landlord to provide another one month's rent compensation cheque to the Tenant.
10. If the tenancy is terminated, and if the Tenant is unable to cash the compensation cheque already in her possession, the Landlord will provide a new cheque to the Tenant for \$1,575.00 on or before July 31, 2023.

## Good Faith

11. 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.
12. 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.
13. 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

14. The Landlord testified that in good faith he served a previous N12 to the Tenant on March 21, 2022 for a purchaser's own use of the unit; however, the Landlord was unable to provide the purchaser with vacant possession of the rental unit by the closing date and the and therefore the Agreement of Purchase and Sale (APS) expired. The Landlord's representative submitted that the L2 application for the matter was dismissed by the Board during a hearing on January 9, 2023, and through order LTB-L-019499-22 issued on March 6, 2023.
15. The Landlord testified further that he wanted to sell the unit in March 2022 as a result of the additional financial pressures from one of his children starting university; however, when the potential sale of the property expired, and the previous L2 was dismissed by the Board, he discussed the situation with his parents. The Landlord explained that his parents live in the basement of the Landlord's small bungalow – a house shared with his four children and spouse. The Landlord stated that his parents decided they would like to live in the rental unit, an apartment on the 14<sup>th</sup> floor of a large residential complex, in order to avoid the stairs of the bungalow, and to provide his family with more space. The Landlord remarked that his mother plans to provide care services to his father in the unit, and they plan to pay \$2,600.00 a month for rent.
16. Pursuant to s. 72(1)(a) of the Act, Dubo Mohamed, the Landlord's mother, provided a signed declaration dated January 21, 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.

17. The Landlord noted that the Tenant has resided in the rental unit since January 2013, and he never had any issues with the Tenant until he served her the previous N12.

### Tenant's Evidence

18. The Tenant's representative submitted that the Landlord's application to evict the Tenant is not made in good faith on the basis that the Landlord has a history, from the previous N12, of trying to evict the Tenant without just cause. The representative asserted that the Landlord's previous L2, LTB-L-019499-22, was dismissed by the Board on the grounds that the Landlord had not entered into an APS when the previous N12 had been served, and the Landlord had not established that the purchaser in good faith required possession of the rental unit. The representative submitted further that within a week of the L2 being dismissed on January 9, 2023, the Landlord served the current N12 to the Tenant.
19. The Tenant testified that she believes that the Landlord's mother will not move into the rental unit. The Tenant explained that the mother has lived with the Landlord for many years, and questioned why the mother would want to move to the unit at this point in time. The Tenant also noted that the Landlord lives in Scarborough, and the unit is in Etobicoke, resulting in greater separation between the family members.

### Analysis

20. On the basis of the evidence provided, I am satisfied that the Landlord's mother genuinely intends to use the rental unit for her own personal residence for at least one year to provide care services for the Landlord's father who will also reside in the rental unit, pursuant to s. 48(1)(d) of the Act.
21. I accept that the Landlord's previous L2 application was dismissed on the grounds that there was an absence of evidence that the purchaser in good faith intended to move into the rental unit. However, I do not accept that the deficiencies in the Landlord's evidence for his previous L2 application are indicative of bad faith from the Landlord with respect to the Landlord's current application. I find that the conduct and the motives of the Landlord and his mother to genuinely use the rental unit for the mother's residential occupation are reasonable, appropriate, and in good faith.
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 & Rent Deposit**

23. The Landlord testified that this is a month-to-month tenancy with a monthly rent of \$1,615.00, effective May 1, 2023, paid on the first day of each month. The Landlord confirmed that the Tenant remains in possession of the rental unit.

24. Based on the monthly rent, the daily compensation is \$53.10. This amount is calculated as follows: \$1,615.00 x 12, divided by 365 days.
25. The Tenant was required to pay the Landlord \$3,929.40 in daily compensation for use and occupation of the rental unit for the period from April 1, 2023 to June 13, 2023. Since the termination date in the notice of termination, the Tenant paid the Landlord \$4,805.00 in rent. As of the day of this hearing, the Tenant's daily compensation payments have exceeded the amount she was required to pay by \$875.56.
26. The Landlord collected a rent deposit of \$1,375.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$12.53, is owing to the Tenant for the period from February 1, 2023 to June 13, 2023.
27. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy

### **Relief from Eviction**

28. 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 September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
29. The Tenant testified that she is a single mother, working as a school bus driver, with four children aged 10, 12, 16 and 19. The Tenant noted that she has been living in the unit more than 10 years and an eviction would be extremely disruptive to her and her children. The Tenant remarked that she wants to retain her tenancy, and that it would be very difficult for her to find an alternate rental unit.
30. I find that, although the Landlord in good faith requires possession of his rental unit for the residential occupation of his mother to care for his father, postponing the Tenant's eviction until September 30, 2023 will provide the Tenant with more time to secure a rental unit and transition her family to a new unit with the least amount of stress. I find that providing the Tenant with complete eviction relief, or delaying the Tenant's eviction beyond September 30, 2023, would be unfair to the Landlord who seeks to accommodate his mother as his father's caregiver in the rental unit as soon as possible.
31. I am satisfied that the eviction postponement to September 30, 2023 would not be financially unfair to the Landlord, given that the Tenant has continued to pay her rent, and has no rent arrears as of the day of this hearing. I am also satisfied that the Landlord's mother's move to the rental unit is not immediately time critical. For these reasons, I therefore find that the mother's delayed move to the rental unit would not be unfair to the Landlord, while providing significant relief to the Tenant before the termination of her longterm tenancy.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023.
2. If the Tenant is unable to cash the one month's rent compensation cheque already in her possession, the Landlord shall provide a new cheque to the Tenant for \$1,575.00 on or before July 31, 2023.
3. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 October 1, 2023.
5. As of the date of the hearing, the daily compensation paid by the Tenant since the termination date, and the amount of the rent deposit and interest the Landlord owes on the rent deposit, exceed the amount the Landlord is entitled to by \$(2,263.13).
6. However, the Landlord is authorized to deduct from amount owing to the Tenant \$53.10 per day for compensation for the use of the unit starting June 14, 2023 to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order. If the Landlord or the Tenant do not pay to the other the full amount owing on or before September 30, 2023, the Landlord or the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

**July 7, 2023**

**Date Issued**

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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 April 1, 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.