



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

**Citation:** Daljit Banga v Rafael Serrano, 2023 ONLTB 39819

**Date:** 2023-06-14

**File Number:** LTB-L-052671-22

**In the matter of:** 7216 GAGLIANO DR  
MISSISSAUGA ON L5W1X4

**Between:** Daljit Banga Landlords  
Santosh Banga

**And**

Anna Jose Aparico Tenants  
Rafael Serrano

Daljit Banga and Santosh Banga (the 'Landlord') applied for an order to terminate the tenancy and evict Anna Jose Aparico and Rafael Serrano (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 May 17, 2023. The Landlord, the Landlord's Legal Representative, H. Luthra, and the Tenant, Rafael Serrano on behalf of both, attended the hearing.

**Determinations:**

1. On July 27, 2022, the Landlords gave the Tenants a Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit (N12) with the termination date of September 30, 2022. The Landlords claimed that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
2. The parties initially entered into a tenancy agreement for a term of one year commencing May 31, 2019.
3. The Tenant claimed the notice of termination was invalid because on April 4, 2022, the parties created a new tenancy with a May 2023 termination date. The Tenant relied on text messages between the parties which were provided as evidence at the hearing.

- The text messages show that on April 4, 2022, the Landlords informed the Tenants that starting June 1, 2022, the rent will be increased to \$2,950.00. In response, the Tenants mentioned the rent increase guidelines but stated “*We are willing to take an increase to the current monthly rent of \$2,750 to \$2,850 (From June 2022 – May 2023)*”. On April 6, 2022,

Order Page 1 of 2  
**File Number:** LTB-L-052671-22

the Landlords agreed by stating “... *that’s fine...*”. The Tenants have since paid \$2,850.00 to the Landlords.

- The Landlords argued the parties did not enter into a new tenancy agreement and none could be implied from the one-year rent increase.
- I find two sections of the Residential Tenancies Act, 2006 (‘the Act’) instructive here:

### ***Interpretation***

#### ***2 (1) In this Act,***

*“tenancy agreement” means a written, oral, or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit*

### ***Deemed renewal where no notice***

***38 (1) If a tenancy agreement for a fixed term ends and has not been renewed or terminated, the landlord and tenant shall be deemed to have renewed it as a monthly tenancy agreement containing the same terms and conditions that are in the expired tenancy agreement and subject to any increases in rent charged in accordance with this Act.***

- In this case, based on section 38 of the Act, the tenancy became a monthly tenancy at the expiry of the one-year lease term in 2020. Following the Landlords’ request for a rent increase above the guideline from \$2,750.00 to \$2,950.00 commencing June 1, 2022, the Tenants asked to pay \$2,850.00 for a one-year period from June 2022 to May 2023.
- The Landlord’s acceptance of the offer of an increase in rent for a specific period, created an implied tenancy for a period of one year. While the rent would have lawfully been increased by \$33.00 monthly according to the guidelines, the Tenants offered a \$100.00 increase in exchange for stability for the period “*From June 2022 – May 2023*”. As a result, I find the Landlords served the notice of termination prematurely and the application will be dismissed.
- Although not discussed at the hearing, the Landlords may have compensated the Tenants an amount equal to one month’s rent by September 30, 2022. This amount must be refunded by the Tenants, if cashed.

**It is ordered that:**

1. The Landlords' application is dismissed.

**June 14, 2023**

**Date Issued**

---

**Jitewa Edu**

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.

Order Page 2 of 2