



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

Citation: Anthony Grimaldi v Jennifer Lees, 2023 ONLTB 42320

Date: 2023-06-05

File Number: LTB-L-056732-22

In the matter of: Basement, 11 GLEDHILL AVE
TORONTO ON M4C 5K7

Between: Anthony Grimaldi Landlords
Michelle Viggiani

And

Jennifer Lees Tenant

Anthony Grimaldi and Michelle Viggiani (the 'Landlords') applied for an order to terminate the tenancy and evict Jennifer Lees (the 'Tenant') because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

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 17, 2023 at 1:38 p.m.

The Landlords Anthony Grimaldi and Michelle Viggiani and the Tenant Jennifer Lees attended the hearing.

Preliminary Issues:

1. The Tenant raised a preliminary issue to dismiss the application on the basis that the N12 notice of termination was invalid, as the Landlord Michelle Viggiani was not listed on the Application; however, she was listed on the N12 Notice of Termination. In this case, only the Landlord Anthony Grimaldi was listed on the Application.
2. The Landlord Mr. Grimaldi testified this was a clerical error and sought to amend the Application to include Mrs. Viggiani. Mrs. Viggiani testified she was a Landlord.

Analysis

3. For the following reasons, I find the N12 Notice of Termination is valid and the Tenant's preliminary issue is dismissed.
4. The relevant sections of the *Residential Tenancies Act, 2006*, (the 'Act') is:

43 (1) Where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,

- (a) identify the rental unit for which the notice is given;
- (b) state the date on which the tenancy is to terminate; and
- (c) be signed by the person giving the notice, or the person's agent.

5. In this case, the N12 notice of termination contained the correct rental unit, the termination date of September 30, 2022 and was signed by both Landlords, Mr. Grimaldi and Mrs. Viggiani. I find that the N12 notice of termination is valid as it meets the conditions listed under section 43 (1) of *the Act*.
6. Also, it was undisputed that Mrs. Viggiani was in fact a Landlord, so since there was no prejudice to the Tenant as there was no lack of clarity of who the Landlords were, I accept this was a clerical error and accept the Landlords request to amend the application to include Mrs. Viggiani.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of August 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On July 27, 2022, the Landlords gave the Tenant an N12 notice of termination the termination date of September 30, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation for their own use.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by,
 - (a) the landlord
 - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
5. In this case, the N12 notice gives the Tenant over 60 days' notice and the termination date is the day a period of the tenancy ends.

Good Faith

6. I find that the Landlords' in good faith requires possession of the rental unit for the purpose of their residential occupation for a period of at least one year.
7. The Landlord, Mr. Grimaldi testified the residential complex is a triplex with the Landlords occupying the main floor, the Tenant occupying the basement, and the top floor being occupied by a separate tenant.
8. Mr. Grimaldi testified in the near-term, he and his family require the additional space to work as part of their home office as well as for storage. The Landlord further testified the long-term plan was to build an extension to the home and occupy all three floors as part of creating their dream home for a growing family; however, residing in the basement unit for their own personal use is only the first step in a multi-step process. The Landlords submitted email correspondence into evidence which openly communicates their near-term and long-term plans for the basement and for the residential complex to the Tenant, and submitted a building permit issued November 4, 2022 which shows the extension will only impact the top floor of the home and supports the Landlord's testimony regarding their intention to add an extension to the home and occupy the home long-term, for a period of at least one year to support a growing family.
9. The Tenant alleged the Landlords issued the N12 notice of termination in bad faith as the Landlords' true intention was to renovate the unit. The Tenant submitted an audio recording of a conversation between the Tenant and Mr. Grimaldi into evidence to support this allegation. The Tenant also claimed the Declaration was invalid as it was only signed by Mr. Gramaldi, and not Mrs. Viggiani.

Analysis

10. As stated above, the leading case respecting whether the Landlord has satisfied the "good faith" requirement set out in subsection 48(1) of the Act. is *Salter v. Beljinac*.
11. In *Salter v. Beljinac, 2001*, the Divisional Court held that:

"the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal..."
12. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are "largely irrelevant."
13. The case law in this area clearly establishes that the test of bona fides is determined by considering the intention of the person named in the application. If that person intends to reside in the unit, then the notice is given in good faith.
14. As stated above, the Landlord, Mr. Grimaldi testified the Landlords require the Tenant's basement rental unit for the purposes to work as part of their home office as well as for storage. The Landlord works from home and as such requires additional space for private work space; in addition, the Landlord require space for storage for current personal

belongings, belongings acquired and being acquired from family members and for future renovation supplies and to potentially live in at times when renovations occur elsewhere in the home.

15. I have considered all the evidence, including the audio recording from the Tenant, and I am satisfied based on the Landlords' evidence that the Landlords genuinely intend to move into the rental unit and use it for residential occupation. Therefore, I am satisfied the Landlord has met the "good faith" requirement set out in subsection 48(1) of the Act.

Analysis – Affidavit/Declaration

16. It is also the case that clause 72(1)(a) of the Act deprives the Board of the jurisdiction to terminate the tenancy and evict the Tenant "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 for a period of at least one year".
17. In this case, the Landlord's declaration is only signed by Mr. Grimaldi and not Mrs. Viggiani.
18. The issue with this declaration is that it does not certify that both the Landlords require the rental unit for their own personal use for a period of at least one year.
19. At the hearing, Mrs. Viggiani's sworn testimony was that she intended to occupy the rental unit for a period of at least one year. This begs the question of whether sworn testimony at the hearing provides an adequate substitute for the affidavit/declaration requirements of the Act.
20. There is support in the Board's jurisprudence for the proposition that sworn testimony consistent with the affidavit/declaration requirements of the Act is sufficient. See, for example, *Blasi v John, 2021* where the Board concluded:

4. Section 212 of the RTA provides that "substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient." In this case, rather than providing an affidavit stating that she would reside in the unit for at least one year, the Landlord's daughter provided sworn oral testimony. Oral testimony is more reliable than affidavit evidence, since it is given before the Member and is subject to cross-examination. Hence, the Board did not err in finding that the daughter's oral testimony was sufficient to satisfy the requirements of subsection 72(1)(a).

5. Section 183 requires that the Board adopt the most expeditious method of determining the questions arising in a proceeding. It would have been a pointless waste of time to require the Landlord's daughter to produce a written affidavit at the hearing, when she could instead give the same evidence, in a more reliable form, on the witness stand.

21. I accept this reasoning in the present case and conclude that the affidavit/declaration requirements of *the Act* were satisfied by the Mrs. Viggiani's oral testimony.
22. I have considered all the evidence and I find that the Landlords proved that it is more likely than not that they in good faith require the rental unit for the purposes of residential occupation for a period of at least one year. I attribute considerable weight to the email correspondence and building permits which was consistent with Mr. Grimaldi's testimony about the Landlords' near-term and long-term plans for the unit and the testimony from Mrs. Viggiani which was consistent with the declaration signed September 30, 2022, by Mr. Grimaldi that was submitted into evidence.

Compensation

23. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48".
24. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is September 30, 2022.
25. It is undisputed the Landlords have compensated the Tenant \$780.00, by waiving the Tenant's obligation to pay rent in August 2022. Email correspondence from the Landlords dated July 27, 2022 stating same, and an email correspondence response from the Tenant dated August 1, 2022 confirming receipt of the rent waiver were submitted into evidence.
26. I have considered all the evidence and I find it is more likely than not the Landlords provided compensation to the Tenant an amount equal to one month's rent. The compensation was provided before September 30, 2022.
27. There is no rent being held on deposit.

Relief from Eviction

28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until August 31, 2023 pursuant to subsection 83(1)(b) of the Act.
29. The Tenant testified she has limited income, as she works as a support staff in a school and her primary source of income during the summer months is limited to employment insurance. The Tenant further testified she is the primary care giver for her aging parents who live nearby and that it will take considerable time to find a suitable and affordable unit close to both her work and her family given the current rental market conditions and therefore requested to delay the eviction.
30. The Landlords acknowledged the circumstances and consented to delaying the eviction to the end of August.

31. I find that it would not be unfair to postpone the eviction until August 31, 2023. This will provide the Tenant with additional time to complete a housing search for an affordable and suitable unit in the area.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Landlords 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 Landlords on or after September 1, 2023.
4. If the unit is not vacated on or before August 31, 2023, the Tenant shall also pay to the Landlords \$25.64 per day for compensation for the use of the unit from September 1, 2023 to the date the Tenant moves out of the unit.

June 5, 2023

Date Issued

Greg Witt

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 February 29, 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.