



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

Citation: Lorusso v Wilkinson, 2023 ONLTB 40101

Date: 2023-05-29

File Number: LTB-L-031840-22

In the matter of: 294 HARBOUR ST
KINCARDINE ON N2Z2X9

Between: Carman Lorusso Landlord

And

Anthony Wilkinson Tenant

Carman Lorusso (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Wilkinson (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 February 9, 2023.

The Landlord, Landlord's son Jesse James Lorusso(JJL), Landlord's representative James Romeo Roussy, the Tenant, and the Tenant's witness Amy Short Reed(ASR) attended the hearing.

Determinations:

1. For the reasons 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.
2. On June 1, 2022, the Landlord served an N12 Notice of Termination (the "N12 Notice") on the Tenant. The N12 Notice provides the Landlord's child intends to move into the rental unit and occupy it for at least one year. The date of termination was August 31, 2022.

Compensation

3. The Landlord testified he paid the Tenant compensation equal to one month's rent on June 01, 2022 when it was delivered together with the N12 notice by courier to the Tenant. This was prior to the termination date in the N12 Notice.
4. The Tenant conceded that he received the compensation equal to one month's rent on June 01, 2022 and also sent a letter to the Landlord's legal representative on August 10, 2022 to confirm the receipt the compensation cheque.
5. As a result, I find the Landlord has satisfied their obligation under section 48.1 and Section 55.1 of the Act.

Good faith intention to reside in the rental unit for one year

Tenant's Evidence

6. The Tenant claims that the Landlord gave him the N12 in bad faith due to two previous defective N12 notices and the Landlord's attempt to increase the rent above the guideline.
7. The Tenant testified that the Landlord gave him an N12 notice after he decided to assert his rights as a Tenant. The Tenant reports that during a conversation with the Landlord on January 4, 2022, he declined the Landlord's proposal to raise the rent beyond the allowed guideline limit, and as a result, the Landlord gave him an ultimatum to either pay the increased rent or move out of the unit.
8. The Tenant claims he was served with the first N12 on January 05, 2022, to vacate the unit on February 28, 2022. The first N12 notice was cancelled and replaced with a second N12 served on March 18, 2022, to vacate the unit on May 31, 2022, since the termination date of the first N12 was less than sixty days. The Landlord served him a third N12 on June 01, 2022, with a termination date of August 31, 2022, because the Landlord failed to pay the Tenant compensation by the May 31, 2022, termination date.
9. The Tenant claims that he received the first N12 notice as a form of retaliation because the Landlord's son had never shown interest in moving into the unit until after the N12 notice was served on June 1, 2022.
10. ASR, the Tenant's witness, testified that JJJ came to the unit on January 07, 2022, in the morning and was quite upset about the N12 notice and mentioned he was unaware of the notice filed by his parents. On February 25, 2022, at 8 am, JJJ came to the rental unit again and was very upset and stayed for a while when he mentioned that he did not want to stay in the upstairs rental unit in dispute.

Landlord's Evidence

11. The Landlord testified that his son, who lives with him, uses the main floor and the basement of the rental unit as his advanced studio. The Landlord testified that his son

wants to move into the rental unit to live and work at the residential unit as it would save him money and time to live and work together in the same residential unit. The Landlord conceded to serving the Tenant previous N12s and testified that he disclosed all the N12s in this application.

12. This accords with the affidavit sworn by the Landlord's son, Jesse James Lorusso, dated June 03, 2022. That affidavit also provides that the Landlord's son requires the rental unit and intends to make the rental unit his permanent residence for more than one year.
13. JLL testified that he works at a nearby hotel and has been running a dance studio in the rental unit since March 2018. He also mentioned that he moved into the unit in May 2021 after converting the basement from a storage facility into a living space. JLL claims that residing in the basement has been challenging due to frequent floods caused by weak building structures. These floods also result in a frequent window and door freezes during the winter and that is the reason he sometimes stays at his parents' house. JLL admitted to visiting the Tenant ASR in the upper rental unit on January 07, 2022, and February 25, 2022, but he did not mention anything about being unaware of the N12 notice.

Analysis

14. In this case, the Tenant claims that the Landlord was seeking to terminate the tenancy because the Landlord had an issue with him not signing a new lease. However, the existence of difficulties between parties does not place a reverse onus on a Landlord to show that he has not acted in bad faith. The test is whether, "in good faith," JLL intends to occupy the unit for residential purposes, not good faith untainted by any hint of difficulties between the parties. If that were the legal test, then an N12 could only be served in circumstances where the Landlord and tenant relationship was completely unblemished by any problems. That is not the law.
15. Also, the evidence shows that the Landlord disclosed the previous N12s in the application, and the Tenant was not prejudiced in their ability to investigate patterns in the Landlord's use of N12s. The Landlord's disclosure of all previous N12s in the application instead demonstrates the intention of the Landlord's son to move into the rental unit for one year.
16. Equally important, nothing in the JLL's sworn testimony suggests any credibility issue or the affidavit he signed. The evidence shows that JLL is also a part owner of this rental and wants to move into the unit where he operates his dance studio and resides in the basement.
17. Based on all of the evidence submitted by the parties, I am therefore satisfied, on the balance of probabilities, that the Landlord's son, JLL, in good faith requires possession of the rental unit for the purpose of residential occupation and she genuinely intends to reside in the rental unit and for a period of one year.

Relief From Eviction:

18. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act..
19. At the hearing, the Tenant testified that he had resided in the unit before the Landlord's purchase five years ago and had decided to remain in the unit and defer his search for alternative rental accommodations until after the hearing and ordered by the Board to vacate the unit.
20. The Landlord requests a standard order of termination because the Tenant was given the N12 notice on June 01, 2022 and has had enough time to find a new place to live.
21. In consideration of the above, I find that postponing the termination date to June 30, 2023, is appropriate in these circumstances. While I appreciate the prejudice to the Landlord in postponing the eviction, I find the Tenant has resided in the for over five years and will require a few more days to organize his move.

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 June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord 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 Landlord on or after July 01, 2023.
4. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 31, 2023

Date Issued

Percy Laryea

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 December 10, 2023 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.