



**Order under Sections 69, 57  
Residential Tenancies Act, 2006**

**Citation:** GEBARA v RUANO, 2023 ONLTB 38934

**Date:** 2023-05-29

**File Numbers:** LTB-L-074039-22  
LTB-T-061804-22

**In the matter of:** 1, 106 MELROSE AVENUE OTTAWA  
ON K1Y1V1

**Between:** MICHAEL GEBARA Landlord

**And**

JESSICA RUANO Tenant

MICHAEL GEBARA (the 'Landlord') applied for an order to terminate the tenancy and evict JESSICA RUANO (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 Tenant applied for an order determining that the Landlord gave the notice of termination in bad faith.

These applications were heard by videoconference on October 5, 2022.

The Landlord, the Landlord's witnesses, Adam Gebara ('AG') and Chady Eldali ('CE'), and the Tenant attended and participated in the hearing.

**Determinations:**

The Landlord's Application

1. The parties agreed at the hearing that the Tenant vacated the rental unit on December 31, 2021. The Tenant did not dispute the Landlord's evidence that the Landlord's witness (son) AG began occupying the rental unit on January 1, 2022. The parties agreed that AG continued to occupy the rental unit as of the October 5, 2022 Board hearing date.

2. The Landlord paid the Tenant compensation in an amount equal to one month's rent after the June 30, 2021 date of termination in the Form N12 termination notice the Landlord gave the Tenant. However, the Tenant vacated the rental unit on December 31, 2021. I find that the tenancy ended on that date.
3. At the hearing, the Landlord requested an order requiring the Tenant to pay rent arrears and/or compensation for the period July 1, 2021 to December 31, 2021.
4. The Tenant testified that she attempted to pay rent to the Landlord in July 2021, August 2021 and September 2021 via electronic transfers of funds. The Tenant explained that the Landlord refused to accept the transfers.

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5. The Landlord agreed that he declined to accept rent in July and August 2021. The Landlord explained that he expected the tenancy to be terminated at a Board hearing scheduled in August 2021. Since he was holding a rent deposit, the Landlord believed that he would be required to apply the deposit to rent in August 2021. The August 2021 Board hearing was adjourned on the Tenant's request.
6. The Landlord did not recall whether he declined an electronic payment from the Tenant in September 2021. I accept the Tenant's sworn testimony that the Landlord declined a rental payment in September 2021.
7. However, based on the evidence, I find that the Landlord did not waive the Tenant's obligation to pay rent for the period July 1, 2021 to December 31, 2021. The Tenant agreed at the hearing that the Landlord asked the Tenant to defer paying rent, because the Landlord sought instructions from a Board order on how to address rent and daily compensation payments after giving a notice of termination.
8. The Tenant did not dispute the Landlord's evidence that the Tenant did not try to pay rent from October 1, 2021 to December 31, 2021.
9. At the hearing, the Tenant argued that she should not be required to pay rent for the period July 1, 2021 to December 31, 2021 because the Tenant and her household were forced to vacate the rental unit and find new accommodation during the COVID-19 pandemic.
10. Although I am mindful of the Tenant's testimony that finding and moving to a residence during the pandemic was stressful, the Tenant's submissions are not grounds to order an abatement of rent. The Landlord had the right to give the Tenant a notice of termination under the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant shall therefore be ordered to pay the Landlord rent for the period July 1, 2021 to December 31, 2021, or \$8,400.00.
11. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$68.70 is owing to

the Tenant for the period ending December 31, 2021. The rent deposit and interest owing shall be deducted from the rent the Tenant must pay.

12. In the circumstances, I find that it is appropriate to postpone the deadline for the Tenant to pay the amount owing until August 31, 2023, or by approximately three months. Had the Landlord accepted the Tenant's electronic money transfers in July 2021, August 2021 and September 2021, the order requiring the Tenant to pay would be for a lesser amount of rent arrears. The Tenant shall be required to pay interest if the full amount is not paid on or before August 31, 2023. In affirming the Tenant's obligation to pay interest under subsection 207(7) of the Act, I note that the Tenant did not tender rental payments from October 1, 2021 to December 31, 2021.
13. As a no-fault eviction application, I find that it is not appropriate to order the Tenant to pay the Landlord's Board filing costs. The Landlord agreed to waive costs at the hearing.

### The Tenant's Application

14. The Tenant did not prove that the Landlord gave the Form N12 notice of termination in bad faith.

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15. The Tenant testified that she became aware of a rental advertisement for the rental unit in May 2022. The Tenant explained that she filed her application with the Board because of the rebuttable presumption of bad faith in subsection 57(5)(a) of the Act. The Tenant gave evidence of her belief that rental advertisements are posted by an automated computer system.
16. The Landlord's witnesses confirmed that a computer system automatically posts a rental advertisement for a unit when it is noted that a tenant does not occupy the rental unit. CE, who works for the Landlord as a property manager, testified that AG is not identified as a "Tenant" in the computer system, because he is the Landlord's son. Nobody was able to explain why the advertisement may have been posted in May 2022. When AG learned of the advertisement, he asked the Landlord to remove it, because AG did not intend to vacate the rental unit. AG testified that he chose to permanently occupy the rental unit because it provides space for his family to grow.
17. Despite a rental advertisement for the rental unit, the evidence shows that AG has occupied the rental unit on a permanent, full-time basis since January 1, 2022. I find that there is no evidence that AG, or the Landlord, intended to re-rent the rental unit in May 2022. Rather, the best evidence is AG's testimony that he and his spouse wish to start a family, and that they require the rental unit for residential purposes.

- 18. The Tenant has therefore not proven that the Landlord gave the notice of termination in bad faith.
- 19. All the reasons for this order are contained herein and no further reasons will be given.

**It is ordered that:**

- 1. The tenancy between the Landlord and Tenant is terminated as of December 31, 2021. The Tenant moved out of the rental unit on December 31, 2021.
- 2. The Tenant shall pay the Landlord \$6,931.30. This amount represents rent and/or compensation payable for the period July 1, 2021 to December 31, 2021, less the rent deposit and interest owing on the deposit.
- 3. If the Tenant does not pay the full amount owing by August 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.
- 4. The Tenant's application is dismissed.

**May 29, 2023**

**Date Issued**

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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 -888-332-3234.