



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

Citation: Nukkala v Grewal and Eliers 2023 ONLTB 34017

Date: 2023-05-29

File Number: LTB-L-040441-22

In the matter of: 1507, 541 BLACKTHORN AVE YORK
ON M6M5A6

Between: Annegret Nukkala Landlord

And

Daman Grewal Tenant
Roy Eliers

Annegret Nukkala (the 'Landlord') applied for an order to terminate the tenancy and evict Daman Grewal and Roy Eliers (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.

This application was heard by videoconference on March 20, 2023.

The Landlord's legal representative, Bitu Di Lisi, and the Landlord attended the hearing.

The Tenant's legal representative, Anthony Bayovo, and the Tenant, Daman Grewal (DM) attended the hearing.

Determinations:

1. The Tenant is in possession of the rental unit.
2. The Tenant was in possession of the rental unit on the date the application was filed with the Board.

3. The rental unit is a 1 bedroom apartment with a kitchen, bathroom, and open concept dining and living area on the 15th floor of a rental complex. The rental unit has a balcony.
4. This is a month to month tenancy in which rent is due on the 1st of each month in the amount of \$1,330.00.
5. On July 5, 2022, the Landlord gave the Tenant an N12 notice of termination the termination date of September 30, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
6. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required stating that she intends to move into the rental unit for no less than one year.
7. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from to March 20, 2023 .
8. In accordance with subsection 106(10) of the Residential Tenancies Act, 2006, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
9. The Landlord compensated the Tenant in the amount equal to one month's rent in the form of a bank draft in the amount of \$1,330.00 and did so before the termination date on the N12 notice by September 30, 2022.

Compensation Money Order Not Deposited

10. The tenant acknowledged receiving the compensation equal to the amount of one month's rent in an e-mail sent to the landlord on July 28, 2022, and stated she did not accept the N12 notice or that she would not be depositing the money order.
11. I find that the Landlord has discharged her obligation to pay compensation to the Tenants. Tenants who are subject to a valid application under s. 48 cannot frustrate the Landlord's good faith efforts to take possession of the unit by refusing to accept compensation.
12. It is open to a tenant not to deposit a cheque or in this case money order, however, not doing so, does not mean that the Landlord has failed to pay the required compensation. A finding to the contrary would allow a Tenant to perpetually frustrate the Landlord's attempts under s. 48 be continually refusing to accept payment. However, I am aware that as of the day of the hearing the Tenant has not actually received the compensation originally provided by the Landlord, and as such I expect the Landlord to take reasonable steps to ensure that the compensation is provided to the Tenants. I will deal with the compensation in this order under the "It is ordered that..." section below.

PRELIMINARY: NOTICE NOT TO END OF TERM

13. The Tenant raised a preliminary issue that the Landlord's N12 notice was not to the end of the term of the tenancy.
14. The Tenant submitted as evidence, a handwritten tenancy agreement signed by both the Landlord and the Tenant on February 1, 2015, with a tenancy date commencing on March 1, 2015. The tenancy agreement was a fixed term lease for a period of five years ending February 28, 2020. The handwritten lease agreement between the Landlord and the Tenant also included a clause that there would be opportunity for renewal options at the end of the 5 years.
15. The position of the Tenant is that after the five year term lease ended, it automatically renewed for another five years of tenancy as indicated by the clause outlining the renewal options in the tenancy agreement, giving the Tenant possession of the rental unit until February 28, 2025, And as such the Landlords date of termination for September 30, 2022 is not end of term and the notice should be deemed invalid. The Tenant relies on a clause in the handwritten tenancy agreement that states renewal options would be available at the end of the five years.
16. The Landlord does not dispute the five year tenancy agreement which commenced on March 1, 2015 but holds the position that at the end of the term of the tenancy agreement, the Landlord and the Tenant did not renew the tenancy agreement either by oral or written agreement and therefore the tenancy became a month to month tenancy, with rent due on the 1st of each month and each term ending on the last day of each month. The Landlord submits that she did not enter into another five year term lease with Tenant and as such, the termination date of September 30, 2022 is valid.

LAW AND ANALYSIS: TENANCY AGREEMENT

17. Section 38 (1) of the Act states: 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

[Emphasis added.]

18. The onus rests with the Tenant to provide sufficient evidence to support her claim that the Landlord and Tenant entered into another 5 year fixed term lease. The Tenant failed to provide any evidence to support her claim that she and the landlord entered into another 5 year fixed term lease and relies on the clause stating there would be renewal options as the basis for her claim.
19. I find with the evidence before me and on a balance of probabilities that the tenancy between the Landlord and the Tenant was not renewed on another five year fixed term tenancy, and rather was renewed as a month to month tenancy as of March 1, 2020, once the previous tenancy agreement had ended on February 28, 2020. As such the termination date of September 30, 2022 in the N12 notice is valid and therefore the Tenant's claim must be dismissed. .

LAW AND ANALYSIS

20. According to s.48(1) of the Act:

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 for a period of at least one year by,

a) the Landlord;...

21. The position of the Landlord is that she is currently living in an old farm house with one other person, an elderly man who owns the farm house. The farm house has 2 bedrooms on the main floor with a kitchen, living and dining area. The farm house was built in the late 1800's, and does not have working plumbing in the house. The Landlord testified she has to boil water and sponge bathe.
22. Drinking water is provided by a pump from the well.
23. The Landlord has been residing at the farmhouse for approximately 20 years well she cared for the elderly gentleman who owned the farmhouse. The Landlord testified that as she is now getting older it is becoming more difficult to reside in the farmhouse without any working plumbing and now requires the rental unit to move into as the farmhouse living has become too difficult at her age.
24. The Landlord testified that the gentleman that owns the farmhouse is 96 years old and should anything happen to him in his aging years she has concerns that the family may sell the farm house and she would be left without a place to live. The Landlord served the N12

notice to the Tenant so she may reside in the rental unit and only visit the elderly gentleman at the farmhouse.

25. The landlord is seeking a standard order for eviction from the Board.

TENANT SUBMITS N12 NOTICE SERVED IN BAD FAITH

26. The position of the Tenant is that the Landlord serve the N12 notice in bad faith. The position of the Tenant is that the Landlord could easily renovate the farmhouse that she currently lives in to include indoor plumbing and therefore be able to stay at the farmhouse and not evict the Tenant.
27. The Tenant also submitted that the true intention of the Landlord is to sell the rental unit, and has no intention of living in the rental unit. The Tenant claimed that she intended to buy the rental unit, but when that failed the Landlord filed the N12 notice in retaliation.
28. The Landlord testified that while she lives in the farm house, it is not owned by her and therefore cannot make renovations to the farm house, whether she wishes to or not.
29. The Landlord restated her position that she can no longer live in the farm house with no indoor plumbing as she herself is getting older and it is becoming more difficult to live in the farmhouse under such conditions.
30. The determinative issue before me is whether the Landlord gave the Tenant the N12 notice of termination in bad faith. In other words, what was the intention of the Landlord when she gave the Tenants the N12 notice?
31. On any application before the Board the party making an allegation has the onus of proving that allegation on a balance of probabilities. That means the Tenants here must lead sufficient evidence to establish it is more likely than not the Landlord did not give the Tenants the N12 notice of termination in good faith.
32. On a balance of probabilities means the Tenant must show that their version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version. 33. Further, as the Supreme Court of Canada stated in F. H. v. McDougall, 2008 SCC 53 ("F.

H. v. McDougall”), at paragraph 46, the civil standard of proof requires that evidence “must always be sufficiently clear, convincing and cogent to satisfy the balance of probabilities test.” Here, in my view, the Tenant’s evidence has not met the required standard.

34. 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.”

35. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) (“Fava”), the Divisional Court, in considering the good faith requirement in s.48(1) of this Act, determined as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the **only issue is whether the landlord has a genuine intent to reside in the property**. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.” [Emphasis added].

Thus, the Board is entitled to enquire into the motives and conduct of a landlord in determining the issue of good faith and to draw inferences about the landlord’s intentions based upon the totality of the evidence presented.

36. With the evidence before me and on the balance of probabilities I prefer the evidence submitted by the Landlord. I accept that the current living conditions of the Landlord are such that she has decided to live in the rental unit where she is afforded indoor running water. And while I note the Landlord has been living in the farm house for approximately 20 years, I also accept that her circumstances have changed with time and the age of the Landlord has forced her to change her living situation.

37. With respect to the Tenant’s suggestion the Landlord can renovate the farm house to upgrade to indoor plumbing, the question of reasonability is not the test the Landlord must meet but rather intent, as noted in *Salter v. Beljinac* above.

38. The Tenant submitted an affidavit submitted to small claims court, by the Landlord to support her claim the failed transaction is the reason the Landlord served the Tenant with the N12 notice. I do not find that this submission of evidence leads to a conclusion that the Landlord does not genuinely intend to move into the rental unit for a period of at least a year. The Tenant’s submission of the affidavit makes claims the Landlord had lied in the affidavit, but provided no evidence to support the claims made with respect to the affidavit, and therefore I did not give this evidence submission much weight in making my final decision.

SECTION 83: RELIEF FROM EVICTION

39. DG submitted she has anxiety disorder and it has gotten worse since the Landlord served the N12 notice on the Tenants.
40. DG testified she has a support network with friends in the community having lived there for as long as she has.
41. DG submitted a request to the Board to consider an extended eviction date of June 30, 2022.
42. After hearing the submissions from DG on her anxiety the Landlord resubmitted an eviction request with an extended date of August 31, 2023 for the Board's consideration.
43. Taking into consideration the Tenants submissions with respect to section 83 and given the Landlord is amenable to a longer eviction date than that requested by the Tenant, I am granting the Landlord her request for termination of the tenancy for August 31, 2023.
44. 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.
45. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
46. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 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 September 1, 2023.
4. The Tenant shall return the stale dated money order to the Landlord.
5. The Landlord shall issue another money order to the Tenant for compensation equal to one month rent.
6. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by (\$1,200.00).
7. However, the Landlord is authorized to deduct from amount owing to the Tenant \$43.73 per day for compensation for the use of the unit starting March 21, 2023 to the date the Tenant moves out of the unit.
8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 29, 2023

Date Issued

Greg Brocanier
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 March 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.