



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

Citation: Hui Shao Chen v Jiefu Xu, 2023 ONLTB 39051

Date: 2023-05-24

File Number: LTB-L-002176-21

In the matter of: SUITE 110, 1 UPPER DUKE CRESCENT MARKHAM
ON L6G0B6

Between: Hui Shao Chen Landlord

And

Jiefu Xu Tenant

Hui Shao Chen (the 'Landlord') applied for an order to terminate the tenancy and evict Jiefu Xu (the 'Tenant') because the Landlord had entered into an agreement of purchase and sale for the rental unit, and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation. 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 April 28, 2023. The Landlord and the Tenant attended the hearing. Jie Situ represented the Landlord. I heard evidence from the Tenant and the purchasers/current landlords of the unit—Shuxin Chen and Xin Li—who were represented by George Brown.

Determinations:

1. On November 26, 2021, the Landlord served an N12 notice with a termination date of February 16, 2022. The N12 was based on the assertion that the rental unit had been sold and the purchasers wished to take possession of the unit for purposes of residential occupation.
2. This application was filed on December 21, 2021.
3. The sale transaction closed on March 1, 2022 and the purchasers—Shuxin Chen and Xin Li—are now the landlords.
4. The Tenant agrees that the (now former) Landlord complied with the technical requirements of the *Residential Tenancies Act, 2006* (the 'Act') and does not dispute that

the purchasers identified in the N12—now the owners of the rental unit—in good faith required (and require) the unit for purposes of residential occupation for at least one year—ie, that the purchasers genuinely intended, and still intend, to move into the unit for

File Number: LTB-L-002176-21

purposes of residential occupation and intend to live there for at least one year. [See **Feeney v. Noble, 1994 CanLII 10538 (ON SC)**, **Salter v. Beljinac, 2001 CanLII 40231 (ON SCDC)** and **Chan v Smith, 2022 CanLII 122610 (ON LTB)**]

5. In terms of the compensation required by sections 49.1 and 55.1 of the RTA, prior to the termination date on the N12 the Landlord gave the Tenant a cheque for an amount equal to the required compensation, but the Tenant did not cash that cheque. In my view, the tender of a cheque by a landlord to the tenant in an amount required by section 49.1 before the termination date on the N12 satisfies the requirements of sections 49.1 and 55.1, whether or not the tenant cashes that cheque. I directed, however, that the required compensation—\$2118.25—be e-transferred to the Tenant and I have received confirmation that this happened on April 28, 2023.
6. The only issue raised by the Tenant in opposition to the L2 was technical in nature. He asserted that this L2 had to be dismissed and the current landlords had to deliver a new N12 for personal use under section 48 of the RTA and start a new L2 application based on that N12.
7. I do not accept the Tenant's argument.
8. While the parties may elect to delay closing the sale of a rental unit until after the LTB has determined an L2 application filed by the landlord/vendor based on section 49 of the RTA, the parties are free, as happened in this case, to complete the transaction and take the risk that the LTB will either not terminate the tenancy and evict the tenant or delay the eviction. This is, in my view, the proper interpretation of the process contemplated by the RTA for terminating a tenancy under section 49.
9. Where a landlord sells a rental unit and the purchaser wishes to take possession of the unit for purposes of residential occupation, the RTA contemplates that the landlord acts on behalf of the purchaser in terminating the tenancy. Subsections 49(1) and 49.1(1) of the RTA says, in part:

49 (1) *A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,*

(a) the purchaser;

49.1 (1) A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

(a) the landlord gives the tenant a notice of termination of the tenancy **on behalf of a purchaser under subsection 49 (1) or (2)**;... (emphasis added)

File Number: LTB-L-002176-21

10. Subsection 69(1) requires that the landlord who delivered the N12 on behalf of the purchaser apply to the LTB for an order terminating the tenancy and evicting the tenant:

69 (1) A landlord may apply to the Board for an order terminating a tenancy and evicting the tenant **if the landlord has given notice to terminate the tenancy under this Act or the Tenant Protection Act, 1997.** (emphasis added)

11. Subsection 49.1(2) of the RTA appears to contemplate that a sale transaction may be completed before the termination date on an N12 notice delivered under section 49. That subsection provides that, notwithstanding that the purchaser becomes the landlord once title to the rental unit is transferred, the obligation to compensate the tenant remains an obligation of the landlord and does not become an obligation of the purchaser. There would be no need for such a provision if the RTA contemplated that a new N12 would have to be delivered under section 48 where the sale transaction is completed prior to the termination date on an N12 delivered under section 49.
12. These provisions, in my view, allow—maybe even require—the Landlord to continue to pursue the L2 notwithstanding that the sale transaction contemplated by the N12 has been completed and the purchasers are now the owners of the unit and the Tenant's landlord.
13. The Tenant agreed to vacate the rental unit on July 30, 2023. The purchasers—the Tenant's current landlords—did not oppose the Tenant being provided until July 31, 2023 to locate alternate accommodations.
14. 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy is terminated. The Tenant must move out of the rental unit on or before July 31, 2023.
2. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the current owners of the rental unit—Shuxin Chen and Xin Li—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 current owners—Shuxin Chen and Xin Li— on or after August 1, 2023.
4. The Tenant shall also pay to the current owners—Shuxin Chen and Xin Li— compensation of \$69.64 per day for the use of the unit starting April 29, 2023 until the date the Tenant moves out of the unit.

May 24, 2023
Date Issued

E. Patrick Shea
Vice Chair, 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 5, 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.