



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

Citation: Frias v Gregoire & Heichert, 2023 ONLTB 39291

Date: 2023-05-22

File Number: LTB-L-057591-22

2023 ONLTB 39291 (CanLII)

In the matter of: 51 Forest Street
Parry Sound ON P2A2R2

Between: Joe Frias Landlord

And

Nikki Gregoire Tenants
William Heichert

Joe Frias (the 'Landlord') applied for an order to terminate the tenancy and evict Nikki Gregoire and William Heichert (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on April 18, 2023.

The Landlord, the Landlord's representatives Adam Fraccaro and Francisco Gomez and the Tenants and the Tenants' representative Lockhart Fulton as Tenant Duty Counsel attended the hearing.

Determinations:

1. On September 29, 2022, the Landlord gave the Tenants an N12 notice of termination deemed served on September 29, 2022 with the termination date of November 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by "his daughters" as per the Landlord's sworn affidavit.

Preliminary Issue

2. The application was filed on October 13, 2022 by the Landlord's representative Adam Fraccaro. The application did not contain a sworn affidavit or declaration by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for their personal use for a period of at least one year.
3. On April 11, 2023, 7 days before the hearing, the Landlord's representative submitted a declaration by the Landlord's daughter, Jacklyn Frias, to the LTB Portal. In the declaration she asserts that she will reside at the unit for a period of one year.
4. In accordance, with s.192.1 of the *Residential Tenancies Act, 2006* (the 'Act') and the Board's Rule of Procedure 1.5, instead of an affidavit, the Board will also accept a signed and dated declaration containing the same information. The person who makes the declaration must confirm the truth of the information or statement and acknowledge that making a false declaration is an offense.
5. The Tenant's representative submitted the application should be dismissed for noncompliance with sections 71.1 and 72(1) of the Act.
6. Section 72(1) of the Act requires that a landlord who seeks a rental unit for their own use must file a declaration from the person who intends to live there affirming as much. It provides that if a landlord fails to do so, the Board "shall not make an order terminating" the tenancy.
7. Section 71.1 has imposed an additional requirement on landlord's who file their applications on or after September 1, 2021. It provides that a landlord must file the declaration at the same time they file the application. But whereas section 72 states that non-compliance means the Board shall not order eviction, section 71.1(2) provides that the Board shall not accept the application for filing if the landlord has not filed the declaration at the same time.
8. The issue here is whether the Board has discretion to consider the merits of an application that was erroneously accepted for filing by the Board despite the landlord not having filed the declaration, but where the landlord has subsequently filed the required declaration.

Extending Timeline

9. Section 190 of the Act allows the Board to extend various timeline requirements in the Act unless the regulations provide otherwise. I note that an extension to file the required

affidavit as required by sections 71.1 is not a matter that has been clawed back from the Board's general discretion to extend timelines in O. Reg 516/06.

10. It appears that the purpose of section 71.1(1) of the Act is ensure that tenants have adequate notice—from filing onward—of the person or persons who intend to the reside in the unit. This is presumably so that they may take steps to adequately prepare for the hearing.
11. In my view the aforementioned contrast in language between section 71.1(2) and other provisions in the Act suggests a legislative intent that the Board *does* have the discretion to consider an application that did not comply with s. 71.1(1) in appropriate circumstances.
12. If the legislature intended the Board to have no such discretion, it could have easily prohibited an order terminating the tenancy in 71.1(2), as it did in section 72 and elsewhere, rather than directing that the application not be accepted. It also could have prohibited the Board from extending the timeline required for filing the declaration.
13. In this case the application was accepted by the Board at the time of filing. It should not have been, but it was. However, in this case I am not satisfied the Tenants have or would suffer any prejudice from extending the timeline and allowing the application to proceed.
14. As of the date of this Order the Tenants will have known for approximately 7 months it was one of the Landlord's daughters who require the unit and, as of April 11, 2023, they are aware of the specific daughter who personally requires the unit prior to the reconvening of the hearing for this matter. I therefore consider this to be an appropriate circumstance in which to extend the time for the landlord to file the declaration.

It is ordered that:

1. The extension of time to file the declaration in compliance with section 71.1(1) is granted.
2. This application is to be reconvened to the next available hearing date to hear the merits portion of the application.
3. On or before June 2, 2023, the parties are to provide the Board with any dates on which they are not available to attend a hearing over the next three months.
4. The Board will send the parties a Notice of Hearing for the next hearing date. The parties are directed to be prepared to proceed on all issues in dispute.
5. Pursuant to Rule 19.7 of the Board's Rules of Procedure a party that does not comply with an order for disclosure may not be permitted to rely on any undisclosed evidence.

6. The Landlord and the Tenants shall disclose and file with the Board a copy of any document, photograph, receipt, recording or like thing they intend to rely on at the hearing for this application and which they have not already disclosed.
7. The Landlord's daughter who personally requires the unit is expected to attend the hearing as a witness.

May 29, 2023

Date Issued

André-Paul Baillargeon-Smith

Member, Landlord and Tenants Board

15 Grosvenor Street, Ground Floor,
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.