



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

Citation: Bessada v Grinberg, 2023 ONLTB 31502

Date: 2023-05-09

File Number: LTB-L-020383-22

In the matter of: 173 GLENFOREST DR
THORNHILL ON L4J8K4

Between: Cameron Allan Bessada Landlord

and

Avi Grinberg Tenant

Cameron Allan Bessada (the 'Landlord') applied for an order to terminate the tenancy and evict Avi Grinberg (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 6, 2023. The Landlord's Representative, Giovanni Villella, the Landlord, the Tenant's Representative, David Olevson, and the Tenant attended the hearing. The hearing was adjourned to ensure an adequate hearing could be held.

At the return on March 27, 2023, the Landlord's Representative, Giovanni Villella, the Landlord, the Tenant's Representative, David Olevson, and the Tenant attended the hearing. Although issues with respect to the Tenant's ability to serve a summons on the Landlord's father, Al Bessada, were raised as a preliminary issue, ultimately this individual attended as a witness called by the Tenant.

Determinations:

1. On March 29, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022 (the “N12 Notice”).
2. The rental unit is a single-family dwelling. The Tenant has lived in the rental unit since 2014 with his brother who is an occupant. The Tenant is and was in possession of the rental unit on the date the application was filed.
3. The Landlord claims they require vacant possession of the rental unit for the purpose of their residential occupation.
4. The Tenant submits the N12 Notice was not given in good faith as the residential complex was transferred from the prior landlord, a corporation owned by the father of the Landlord, to the Landlord, in a deliberate circumvention of the prohibition against a corporation being able to serve Notice of Termination for Landlord’s own use. In addition, the Tenant submits this application should be denied as a matter of policy.
5. For the reasons set out below, I find the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy will be terminated. However, I have exercised my discretion to extend the eviction date until the end of July 2023.

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

6. The Landlord filed a declaration he intends to live in the rental unit for at least one year from the time he moves in. The Landlord testified he definitely intends to stay for at least one year and has no plans on moving out.
7. The Landlord is currently renting a place with his girlfriend and sister on a month-to-month tenancy. The rent is \$3,800.00 a month which the Landlord pays and to which the Landlord’s girlfriend contributes approximately 30%. The Landlord testified he intends to move into the rental unit with his girlfriend and dog to start building their family home and move on to the next stage of their life.
8. The Landlord testified he wishes to move into the rental unit as he wishes to live in the property he owns and will no longer have to pay rent. He anticipates his girlfriend will contribute to expenses once they are living there.
9. The Tenant admitted he had no direct evidence the Landlord did not genuinely intend to reside in the rental unit.
10. When a landlord serves an N12 notice the landlord’s motivations or desire to move into the rental unit for twelve months need not be reasonable and are largely irrelevant – what is required is that the landlord genuinely intend to live in the property. That said, where there are other issues, the conduct and motives of the landlord may be considered as part of the good faith analysis. [See *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) at para. 17, citing *Salter v. Belijinac*, 2001 CanLII 40231 (ON SCDC)]

Prior N12 Notices and proceedings

11. Section 73(3) of the Act provides:

72(3) In determining the good faith of the landlord or the purchaser, as applicable, in an application described in subsection (1), (1.1) or (2), the Board may consider any evidence the Board considers relevant that relates to the landlord's or purchaser's previous use of notices of termination under section 48, 49 or 50 in respect of the same or a different rental unit.

12. As a result, I have considered the Tenant's submissions with respect to the prior N12 notices and non-arm's length transaction below.
13. In addition to the N12 Notice on which this application is based, the Landlord served the Tenant with an N12 notice on October 23, 2021. That N12 notice had a termination date of December 31, 2021, and indicated the Landlord was the one who intends to reside in the rental unit. It was signed by the Landlord's then legal representative on October 23, 2021 (the "December N12 Notice").
14. No application was commenced based on the December N12 Notice. The Landlord testified when this was brought to his attention in March of 2022, the N12 Notice before me was served and the within application filed.

N12 notices delivered by former landlord

15. In addition to the N12 notices served by the named Landlord, three N12 notices were served by the former landlord, Bessada Holdings Inc. The Landlord purchased the rental unit from Bessada Holdings Inc. on June 22, 2021.
16. Firstly, there was an N12 notice with a termination date of June 30, 2020, indicating the former landlord, identified as Bessada Holdings, was the one who intended to reside in the rental unit (the 'June N12 Notice'). Notably, this N12 notice was signed on May 26, 2020, by the Landlord.
17. The Landlord testified he was the one who completed the June N12 Notice and he was the one who intended to move in. The Landlord's father testified the Landlord was the individual who was intended to move in and he had authorized the Landlord to sign the June N12 Notice.
18. The Landlord testified no application was commenced based on the June N12 Notice as there were deficiencies with the length of time between the termination date and date of service. On its face, the June N12 Notice does not appear to comply with the requisite 60 days notice period specified under s. 48(2) of the Act.

19. Secondly, there is an N12 notice with a termination date of August 1, 2021, indicating the former landlord, now incorrectly identified as Al Bessada, and their child wished to reside in the rental unit. This N12 notice was signed on April 13, 2021, by the Landlord's father Allan Bessada.
20. The Landlord's father testified the inclusion of himself on the August 1 N12 Notice was a mistake as he never intended to move into the rental unit, and the child intended to reside in the rental unit was his son, the Landlord. Again, it does not appear an application was commenced based on the August 1 N12 Notice. Had it been there may again have been issues as, on its face, the termination date does not appear to be the end of a rental period as required under s. 48(2) of the Act.
21. Finally, an N12 Notice with a termination date of August 31, 2021, indicating a purchaser intends to move into the rental unit was given by the former landlord, Bessada Holdings Inc. and signed on June 3, 2021, by Al Bessada.
22. Application TNL-33050-21 was commenced June 24, 2021, based on the August 31 N12 Notice. This application was dismissed by Order TNL-33050-21 issued March 14, 2022 as the former landlord had no authority to file the application given it was commenced after the property sold to the Landlord and they were no longer a landlord under the Act.

Prior N12 notices insufficient to infer bad faith

23. There are a significant number of prior N12 Notices and it is clear the Landlord's conduct indicates a desire to evict the Tenant for the past several years. There are disputed issues between the Tenant and the Landlord, including an outstanding T2 application for substantial interference and harassment, and relations are strained.
24. Nonetheless, as set out above, the motivation for service of an N12 notice need not be reasonable and is largely irrelevant – the issue is good faith.
25. There were significant procedural and technical deficiencies with the N12 notices given on behalf of the former landlord. With respect to the December N12 Notice, the Landlord's evidence was he was unaware no application had been commenced until more than 30 days after the date of termination on that notice.
26. All of the N12 notices, with the exception of the June N12 Notice, consistently identified the Landlord who filed this application, whether as landlord, purchaser or child of the former landlord as the individual who intends to occupy the rental unit. For the June N12 Notice the evidence was it was completed by the Landlord and he was the one who was intended to occupy the rental unit. This was consistent with the Landlord's father's evidence at the hearing.
27. On the other hand, the Landlord did not explain why if he intended to move into the rental unit in June 2020 no subsequent corrected N12 notice was given until after the middle of 2021. Further in March 2021, the Landlord entered into his own lease agreement for a term of one year; although, the Landlord testified he had to move then as his family home was being sold.

28. Based on the pattern of N12 notices and applications described above, after April 2021, I find there were consistent and persistent attempts to secure the rental unit for the Landlord's own use.
29. With respect to the Landlord's tenancy for the house he currently occupies, it was a month to month tenancy by the time this N12 Notice was served. The Landlord testified his plan was to pay off his lease and move into his house, that he had discussed this with his own landlord, and that his landlord is willing to accept short notice for termination of the tenancy.
30. In the above circumstances, I do not find the prior N12 notices create an inference it is more likely than not that this N12 Notice was served in bad faith so much as the former landlord and Landlord experienced challenges in correctly completing N12 Notices and filing applications.

The transfer of the property was not arm's length

31. The property was previously owned by Bessada Holdings Inc. Bessada Holdings Inc. is a parent to companies in which the Landlord's father was involved that held assets or through which he performed consulting. The Landlord's father testified Bessada Holdings Inc. owned both residential and commercial properties but is in the process of being wound up.
32. On May 31, 2021, Bessada Holdings Inc. and the Landlord entered into an Agreement of Purchase and Sale ('APS') for the property with a closing date of June 22, 2021.
33. The Landlord admitted he obtained favourable terms in the APS because of his father, was not actively seeking to purchase a home other than the property, and did not engage in certain actions that might otherwise typically be expected upon the purchase of a property.
34. In these circumstances I accept the Tenant's submissions that the sale of the property from Bessada Holdings Inc. to the Landlord was not an arm's length transaction. However, as discussed below, I do not find this is a bar to the Landlord serving and relying on the N12 Notice. I am satisfied that as of June 22, 2021, the Landlord became the legal owner of the rental unit and was therefore entitled to serve the N12 notice for own use on March 29, 2022.

Non-Arm's length transaction does not prohibit reliance on the N12 Notice

35. The Tenant submitted the non-arm's length transfer of the property was essentially a sale on paper only engaged in to defeat the Act's prohibition against a corporation giving an N12 notice for landlord's own use. He submitted this was inappropriate as a matter of policy and was something from which bad faith could be inferred.

36. Section 48(5) of the Act provides:

48(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

(a) the rental unit is owned in whole or in part by an individual; and (b) the landlord is an individual.

37. Notably, section 48(5) is not a complete bar against service of N12 notices where a corporation is involved; rather there is a bar against serving an N12 notice for landlord's own use with respect to a property that is solely owned by a corporation. Importantly, section 48(5) of the Act still permits service of an N12 notice for landlord's own use where the property is owned in part by an individual and the landlord is an individual.
38. Following the sale, the Landlord, an individual, was an owner of the property. Therefore service of the N12 Notice was not barred by virtue of s. 48(5) of the Act.
39. I do not find structuring ownership of a property through a sale, whether non-arm's length or not, so that it is brought into compliance with the Act supports finding there is bad faith or a conclusion that this ought not be permitted for policy reasons. I also do not accept the Tenant's submission that the former landlord is in no different position than it was before the sale.
40. The Landlord's father testified the decision to sell the rental unit took place at some point during the period covered by the service of the N12 notices.
41. The value of the property was ascertained by obtaining two fair market value appraisals from realtors. The APS was drawn up by a lawyer. The sale of the property was satisfied by a non-interest bearing demand promissory note and was secured by a registered vendor take back mortgage in favour of the seller and former landlord. The Landlords' father testified a mortgage was placed on the property.
42. After the sale was completed, the Tenant testified he was not told the property had sold and he continued to pay his rent to Bessada Holdings Inc. It was not until after rent was paid for March 2022, that the Tenant was advised rent should be paid to the Landlord. However, the Landlord and his father both testified the rental payments sent to Bessada Holdings Inc. after the sale were credited towards the promissory note.
43. The Landlord also testified he now makes a payment to Bessada Holdings Inc. towards the outstanding promissory note and referred to it as his mortgage.
44. The Landlord's father confirmed Bessada Holdings Inc. receives a payment from the Landlord each month towards the purchase of the rental unit.
45. While the evidence from the Landlord and the Landlord's father differed with respect to the amount of these payments I do not find this relevant as it was not disputed that whatever the amount, both the Landlord and his father testified the rent paid since the sale has been

credited towards the promissory note. How much has been paid and credited is a matter to be resolved between them.

46. In the above circumstances, where there was a consistent representation that it was the Landlord who would move in and it was not disputed the Landlord is now an owner, I do not find the evidence supports an inference it is more likely than not that there is no genuine intention for the Landlord to reside in the rental unit nor that the N12 Notice was served in bad faith. Not upholding the ability of the Landlord to rely on an N12 Notice served in good faith runs counter to the intent of the Act.
47. I find the Landlord has proven his good faith intention to occupy the rental unit for a period of one year.

Compensation

48. The question of whether the required one month's compensation can be considered paid when it was delivered and deposited in advance of the service of the N12 Notice was raised.
49. The Tenant received a bank draft in the amount of \$2,400.00 from the Landlord at the time the December N12 Notice was served. No application was filed based on the December 2021 Notice.
50. The Tenant did not deposit the bank draft right away but waited until he was advised to do so by his representative. The Tenant understood the bank draft related to an application before the LTB.
51. The bank draft was deposited on March 7, 2022.
52. The May 2022 N12 Notice was served on March 29, 2022. At that time the lawful monthly rent was \$2,400.00.

Analysis

53. Sections 48.1 and 55.1 of the Act provide where a landlord gives a tenant an N12 notice of termination for landlord's own use, the landlord must, before the termination date in the N12 Notice, pay 1 month's compensation or provide another acceptable rental:

48.1 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 the landlord gives the tenant a notice of termination of the tenancy under section 48.

...

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

54. The only deadline in the Act is by when payment of the one month's compensation must be made - i.e. before the date of termination in the N12 Notice. The Act is silent on how far in advance of the service of an N12 Notice the one month's compensation may be paid.
55. The purpose of the delivery of one month's compensation is not to serve as damages, or a windfall for the Tenant should the Landlord not be successful in their attempt to move into the rental unit but is rather to assist the Tenant in finding a new place to live.
56. While compensation may typically be paid when or after the N12 notice relied upon is delivered, situations arise where this is not done such as where has been a prior N12 notice, compensation delivered and a landlord is unsuccessful on their application for termination and eviction. As a result, the landlord may elect to refile and in so doing wishes to rely on the one month's compensation previously delivered.
57. In *2212369 Ontario Inc. v. Vora*, 2022 ONSC 5966, the Divisional Court considered whether a payment of compensation made before a Notice to Terminate was served for purchaser's own use under s. 49 of the Act could constitute compensation under section 49.1 of the Act. The Court held it could:

[10] There is no provision in the *Act* that states that the compensation that the landlord is required to pay under s. 49.1 must be paid after the Notice to Terminate is served. Nor were we given any persuasive principled reason why the *Act* should be interpreted in this manner. In fact, to do so might work an injustice. For example, if a landlord advises a tenant that they will be providing them with a Notice to Terminate under s. 49 and the parties agree that the landlord will pay the tenant their entitlement to compensation prior to the serving of the notice, the Appellant's submission would allow to the tenant to accept the payment before the notice is served and then demand that the landlord make another payment after the notice is served.

58. The language of sections 48.1 and 49.1 are effectively identical and I do not find there is relevant distinction between the obligation to pay compensation when a notice of purchaser's own use is delivered versus a notice of landlord's own use. As such, I find the Divisional Court's reasoning also applies to compensation owing under section 48.1 of the Act.
59. The Landlord gave the Tenant a bank draft for \$2,400.00. This was the amount of the lawful rent at the time the N12 Notice was served. The Tenant deposited this in advance of the date of termination on the N12 Notice understanding it was related to a proceeding for eviction before the Board.

60. In these circumstances, I find the Landlord compensated the Tenant an amount equal to one month's rent before May 31, 2022.

Daily compensation, NSF charges, rent deposit

61. The Tenant is not in arrears of rent. As a result, daily compensation was only sought going forward. It is understood the Landlord will deduct any rent the Tenant has paid after the hearing date from any daily compensation found owing as the Tenant is not expected to pay rent twice.

62. The current lawful monthly rent is \$2,428.80.

63. Based on the Monthly rent, the daily compensation is \$79.85. This amount is calculated as follows: \$2,428.80 x 12, divided by 365 days.

64. The Landlord collected a rent deposit of \$2,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$334.78 is owing to the Tenant for the period from July 1, 2014, to March 27, 2023.

65. 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.

Section 83 Considerations

Mandatory denial of eviction

66. The Tenant submits the Landlord is in serious breach of his obligations such that eviction must be denied under s. 83(3)(a) of the Act.

67. Section 83(3)(a) of the Act provides:

83(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

68. In order for section 83(3)(a) to apply, the Board must be satisfied the Landlord is in breach and that the breach is serious and ongoing at the time of the hearing.

69. While the Landlord submitted he has obtained quotes to repair damages to the property in the range of \$30,000.00 to \$40,000.00 which he intends to perform in any event, the Tenant testified no contractors have ever inspected the rental unit.

70. The Tenant testified a hot water tank broke and was replaced but as a result the carpet in the basement is moldy. Whether the Landlord or former landlord was advised of the issue was in issue.
71. Nonetheless, regardless of whether the Landlord or former landlord were made aware of the issue, the Tenant presented no supporting evidence regarding the presence or extent of alleged mold, admitted he had not had the carpet tested for mold, and did not allege that it was any particular type of mold.
72. On cross-examination the Tenant admitted he has not inspected the carpet to any extent and based his assessment on the fact that it smelled moldy.
73. The Tenant submitted that living with mold was not healthy; but admitted he is not aware whether his health has been affected. The Tenant also testified his brother lives in the basement and when others sleep over they will also stay in the basement. It was not suggested the health of the Tenant's brother or any other person has been affected.
74. While the Landlord testified to damage throughout the property including damage to carpet and water damage in the basement he was not asked about and did not mention the presence of mold.
75. I find the evidence before me insufficient to find that the Landlord, even if in violation of the Act – an issue on which I make no determination in this application – was in serious breach of his obligations under the Act or of any material covenants of the tenancy agreement.
76. As a result, the Landlord's application is not refused under s. 83(3)(a).

Other considerations regarding relief from eviction

77. The Tenant has lived at the property for approximately 9 years. He testified for the past year he and his brother have been searching for a new place to live. The Tenant testified they have worked with a realtor and viewed and submitted applications for approximately 30 other residences without success.
78. The Tenant testified rents for an equivalent property have almost doubled. The Tenant has limited his search to places in the same area with 3 to 4 bedrooms as he wishes to reside with his brother and have a home office from which to run his business. Rent for the places to which the Tenant has been applying range from \$3,000.00 to \$3,500.00. The Tenant posited they have not been successful because he and his brother are self-employed, young, single men.
79. The Tenant submitted he will end up homeless if evicted. However, he has not looked into applying to places separately from his brother nor for smaller rental units where rent might be at or closer to the amount he currently pays nor in other locations.
80. The Tenant estimated it would take 6 to 12 months to find a new place to live. The Landlord was willing to provide the Tenant with an additional 3 months from the date of hearing to find a new place to live.

81. The Landlord is entitled to reside in their property. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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 between the Landlord and the Tenant 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 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 August 1, 2023.
4. 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 \$(2,734.78).
5. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$79.85 per day for compensation for the use of the unit starting April 1, 2023, to the date the Tenant moves out of the unit.
6. Any rental payments made after March 27, 2023, are to be set off against any amounts owed by the Tenant under this order.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

May 9, 2023

Date Issued

Rebecca Case

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 October 29, 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.

Order Page