



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

Citation: Adatiya v Amina, 2023 ONLTB 35883

Date: 2023-05-08

File Number: LTB-L-037092-22

In the matter of: 16 RAINY DALE RD
BRAMPTON ON L6V 4R7

Between: Ayaz Adatiya Landlord

And

Bibi Amina Tenants Muhammad Imtiaz Khan

Ayaz Adatiya (the 'Landlord') applied for an order to terminate the tenancy and evict Bibi Amina and Muhammad Imtiaz Khan (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 March 6, 2023 at 10:42 a.m.

The Landlord Ayaz Adatiya and the Tenant Bibi Amina and Muhammad Imtiaz Khan attended the hearing.

Determinations:

1. As explained below, the Landlord have not met the requirements under subsection 72(1)(a) of *the Residential Tenancies Act, 2006* (the 'Act'), which requires the filing with the Board of an affidavit sworn by the person who personally intends to occupy the rental unit in good faith for a period of at least one year.
2. The Tenants were in possession of the rental unit on the date the application was filed

N12 Notice of Termination

3. On April 30, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's father.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):

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(1) 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 by,

(c) a child or parent of the landlord or the landlord's spouse

(2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

5. In this case, the N12 notice gives the Tenants over 60 days' notice and the termination date is the day a period of the tenancy ends.

Good Faith and Section 72(1)

6. The Landlord testified the Landlord's father intends to move into the unit as the current living arrangement is crowded which includes the Landlord, his wife, his father and his niece and nephew living in a 5-bedroom home. The unit is a semi-detached 3-bedroom home and the Landlord further testified his father intends to move into the unit for a period of at least one year.
7. In support of their application, the Landlord filed a declaration; however, I find the declaration was signed by the Landlord, not signed by the Landlord's father, and the application did not contain specific information confirming that the Landlord's father intended to live in the unit for a period of at least one year.
8. The Landlord did not file either an affidavit or a declaration for their father as required by paragraph (a) of subsection 72(1) of the Act which states:

72.(1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

(a) a notice of termination given under section 48 on or after the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a period of at least one year...

9. I find that the declaration does not meet the legal requirements under subsection 72(1)(a) of the Act. Despite the Landlord's hearsay testimony that claims otherwise, it is a legal requirement under subsection 72(1) that the declaration be from the person who personally intends to occupy the rental unit in good faith for a period of at least one year.
10. As a result of this fatal defect, I find that the L2 Application must be dismissed.

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Compensation

11. The Landlord testified they compensated the Tenants \$2,137.80 on June 30, 2022 an amount equal to one month's rent by June 30, 2022 and the Tenants are still in possession of the compensation.
12. It is undisputed the Tenants received the compensation.
13. Since I am refusing to grant the Landlord's application for not filing the declaration as required by paragraph (a) of subsection 72(1), I will hereby order that the Tenant pay the amount back to the Landlords pursuant to subsection 73.1 of the Act.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenants shall return the compensation to the Landlords by paying \$2,137.80 back to the Landlords by no later than May 30, 2023.
3. If the Tenants do not pay the full amount outstanding by May 30, 2023 then the Tenants will owe interest beginning May 31, 2023. This will be simple interest calculated at a rate of 6.0% annually on the outstanding amount.

May 8, 2023

Date Issued

Greg Witt

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.

2023 ONL TB 35883 (CanLII)