



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

**Citation:** 608598 Ontario Ltd. amalgamated and continuing as 5042103 Ontario Inc. v Tuteja,  
2023 ONLTB 28892

**Date:** 2023-04-06

**File Number:** LTB-L-017797-22

**In the matter of:** 625, 1025 GRENON AVENUE  
OTTAWA ON K2B8S5

**Between:** 608598 Ontario Ltd. amalgamated and continuing as 5042103 Landlord  
Ontario Inc.

**And**

Bindu Tuteja Rohit (Kumar) Tuteja Tenant

608598 Ontario Ltd. amalgamated and continuing as 5042103 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Bindu Tuteja and Rohit (Kumar) Tuteja (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of 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 November 1, 2022.

The Landlord's Legal Representative, A. Katyk, the Landlord's Agent, G. Koutras and the Tenant, R. Tuteja attended the hearing.

L. Laight and D. Laight attended as witnesses for the Landlord.

**Determinations:**

Preliminary Issues

1. The Tenant submits that the Landlord has not complied with section 71.1 of the Act, which states that a Landlord must disclose any notices served under sections 48, 49 or 50 of the Act, failing which, the Board shall refuse to accept the Landlord's application.
2. The Tenant testified that the Landlord has served previous N12 Notices that are not disclosed on the application.

3. The Landlord's representative submits that the N12 that the Tenant is referring to was not disclosed on the application, but was included in disclosure and that the Landlord is not purposely attempting to mislead the Board.
4. I note that the application includes disclosure of 2 previous N12 notices, and that the one in question is not disclosed on the application. The apparent intention of this section is to allow both the Tenant and the Board to observe a pattern in a Landlord's conduct of using N12 notices. The Act does not provide a clear consequence for a landlord's failure to meet their disclosure obligation under subsection 71.1(3). Subsection 71.1(4) provides that "The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)", but does not expressly address what happens when the Landlord has completed the appropriate section of the application, but has omitted one or more N12 or N13 notices. The position of the Tenant is that the application ought to be dismissed based on the defect.
5. While I would accept that, in certain circumstances, the appropriate result for non-compliance with subsection 71.1(3) might be the dismissal of the application, in the current instance I am satisfied that the Tenants in fact had actual notice of the previous N12 notices. From a procedural fairness standpoint, the Tenants in this application are not prejudiced, as they had full knowledge of the Landlord's service of prior N12 notices. They are not prejudiced in their ability to investigate any patterns in the Landlord's use of N12 notice of termination, nor are they prejudiced in their ability to bring any such findings before the Board should they wish to argue, under subsection 72(3) of the Act, that the pattern undermines the professed good faith of the notice of termination.
6. Therefore, I am not prepared to dismiss the Landlord's application on that ground.

Tenant says Section 49 does not apply in this case.

7. The Tenant submits that section 49 of the Act does not apply in this case as the property has not been sold.
8. Section 49 of the Act states:

**Notice, purchaser personally requires unit**

**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;
- (b) the purchaser's spouse;
- (c) a child or parent of the purchaser or the purchaser's spouse; or

9. The Tenant argues that the unit is not fully sold, it is conditionally sold, as one of the conditions, vacant possession, has not been met.
10. Section 49 states that a Landlord who has entered into an agreement of purchase and sale is entitled to serve an N12 notice on behalf of the purchaser, and that is the case before me. There is no requirement for the unit to be sold.

### L2 Application

11. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated
12. The Tenant was in possession of the rental unit on the date the application was filed.
13. On January 18, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by the purchaser's child.
14. The Landlord has compensated the Tenant an amount equal to one month's rent by March 31, 2022.
15. The Purchaser, L. Laight testified that in early 2020, her and her husband attempted to purchase the unit for their daughter to live in. They entered into an agreement of purchase and sale with an original closing date of May 1, 2020. One of the conditions of the APS is that the unit is vacant. As a result of the unit not being vacant, they continue to amend the APS to extend the closing date.
16. S. Laight is the intended occupant, the purchaser's child. She testified that she intends to move into the unit once it is vacant. She intends to live in the unit for at least 5 years. She testified that she is currently renting. The unit she lives in now is out of her budget. It is her plan to move into the unit, save money and eventually buy her own place.

### Tenant's Evidence

17. The Tenant testified that he doesn't believe that the purchaser's child is going to move into the unit. He testified that he doesn't think that the agreement of purchase and sale is valid, and to substantiate this, he pointed to the amendments and that in portions of the agreements, the dates did not line up to the time that the amendments were signed. He testified that because it has been more than two years since the original purchase and sale agreement, he doesn't believe parties would wait this long. He testified that if this were a genuine transaction, you would go ahead and close the sale.
18. Based on the evidence before me, on a balance of probabilities, I find that the Landlord has proven that the Landlord has entered into an agreement of purchase and sale and the purchaser requires possession of the rental unit for the purpose of their child's occupation.
19. I do not agree with the Tenant that the APS is not valid. The purchaser testified that she has entered into an agreement of purchase and sale, and I have no reason to doubt the validity of the agreement. It is the purchaser's decision to continue on with the sale even though quite a bit of time has lapsed since the original agreement, but that does not mean

that the intention to move into the unit is not genuine. The Tenant, if in the same position may not make the same choice, but it does not mean that the genuine intent to occupy is absent. In fact, I take it to mean that pursuing the purchase for so long strengthens the genuine intent to occupy, as it may be easier to walk away and find a new home to purchase. The Purchaser's child testified that she intends to move into the unit. She testified that her plan is to save money and eventually buy her own place once her parents retire and move into the unit in approximately 5 years.

20. The Landlord collected a rent deposit of \$1,230.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$12.33 is owing to the Tenant for the period from January 1, 2022 to November 1, 2022 .
21. 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.
22. Relief from eviction
23. The Tenant testified that they have lived in the unit for Since 2013. The Tenant testified that he has strong ties to the area. Since receiving the notice, the Tenant has looked at other places, but has not applied to any other places. He needs to find something that is senior friendly. He testified that it would be disruptive to move. He testified that he would need 6 months to vacate the unit.
24. The Landlord is seeking a standard order.
25. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act. The Landlord has entered into an agreement of purchase and sale and has amended the agreement on numerous occasions since 2020 to delay the closing date in order to give vacant possession. Delaying the eviction beyond April 30, 2023 would be prejudicial to the Landlord. I am mindful of the Tenant's submissions regarding his personal circumstances, however given the delay in issuing this order, no further delay shall be granted.

**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 April 30, 2023. The Tenant testified that he has strong ties to the area. Since receiving the notice, the Tenant has looked at other places, but has not applied to any other places. He needs to find something that is senior friendly.
2. If the unit is not vacated on or before April 30, 2023, then starting May 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 April 18, 2023.

**April 6, 2023**  
**Date Issued**

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Emily Robb  
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 October 18, 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.