



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

Citation: Miller v Arguelles, 2023 ONLTB 28026

Date: 2023-03-31

File Number: LTB-L-040309-22

In the matter of: 944 PREMIER RD
NORTH BAY ON P1A2H5

Between: John Miller Landlord
(Estate of) Ann Miller

And

Suzanne Arguelles Tenant

John Miller & (Estate of) Ann Miller (the 'Landlord') applied for an order to terminate the tenancy and evict Suzanne Arguelles (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 March 9, 2023.

The Landlord's Estate Trustee John Miller, Cheryl Miller and the Tenant attended the hearing. The Landlord's Legal Representative M. Laderoute, the Tenant's Legal Representative M. Knought and Landlord's witness Suzanne Miller were also present for the hearing

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of September 30, 2023.

Is the N12 Notice Valid?

2. The Tenant was served with N12 Notice of Termination on June 29, 2022 with a termination date of August 31, 2022. The N12 states that Ann Miller is the Owner of the property and John Miller is the Landlord. The N12 states that the Landlord requires the unit for residential occupation by the child of the Landlord. The child in question here is Suzanne Miller who is Anne Miller's daughter and John Miller's sister.
3. The L2 application was filed on July 19, 2022.

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4. Ann Miller passed away on December 7, 2022, which is after the N12 was served and after this application was filed but before the hearing.
5. Since the passing of Anne Miller, the estate has not been settled and therefore the application should be amended to name the Landlord as 'The Estate of Anne Miller'.
6. The estate is equally divided amongst Anne Miller's four children including John Miller, Cheryl Miller and Suzanne Miller who were at the hearing to testify in support of this application. The fourth child, Donald Sawchenko, submitted a signed written statement saying they have no objection to Suzanne Miller moving into the property.
7. The N12 Notice was served pursuant to section 48(1)(c) of the *Residential Tenancies Act, 2006* ("Act") which states:

48 (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 for a period of at least one year by,

- (a) the landlord;
- (b) the landlord's spouse;
- (c) a child or parent of the landlord or the landlord's spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

8. The Tenant's Legal Representative submitted that the N12 Notice does not comply with section 48(1) as Ann Miller has passed away. The other named Landlord, John Miller, is a sibling of the person who intends to occupy the rental unit and section 48(1) does not allow a landlord to serve an N12 notice of termination for a sibling.

9. She also stated that if the Landlord is now John Miller then he has no authority to give a N12 on behalf of a sibling under the *Residential Tenancies Act, 2006* (the "Act"). She questioned the authority of the Board to allow an eviction if the Landlord is a sibling of the person intending to move in.
10. The Landlord's Legal Representative submitted that all material facts of the case remain the same as when the N12 Notice was served. John Miller is still one of the Landlords and the occupant identified in the N12 is still the person intending to move in. The passing of Anne Miller does not change the material facts that Anne Miller wanted her daughter to occupy the rental unit and that's why the N12 was served. The Landlord's intention at the time of serving of the N12 was for her daughter to move and that remains the case.
11. The Landlord's Legal Representative also relied upon the Divisional Court decision of *Elkins v. Van Wissen*, 2022 ONSC 2060 where the court upheld the LTB's finding that the first part of the test under 57(1)(b) requires consideration of the Landlord's intention when the N12 was given. However, as this decision is currently under appeal at the Court of Appeal, I will not rely upon it.
12. I find that the N12 Notice was valid at the time it was given to the Tenant as it was served by the Landlord/owner of the unit to allow for residential occupation by her child. The fact that the Landlord/owner has subsequently passed away is not a circumstance that causes the N12 Notice to become invalid. All the representatives of the Landlord's estate, the current owner of the rental unit, are in support of this application. The fact that John Miller was also named on the N12 Notice and is the sibling of the person who intends to move into the rental unit does not cause the N12 Notice to be defective as the owner of the unit was also named on the N12 Notice.

Application does not include prior N12s

13. Section 71.1(3) of the Act requires a landlord filing this type of application to indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit. The landlord must include specified details about each previous notice.
14. The Landlord's Legal Representative submitted that on the L2 application the Landlord failed to include a prior N12 Notice served on the Tenant on March 14, 2022, with a termination date of May 31, 2022.
15. The Landlord's Legal Representative stated that the omission was a clerical error and the Landlord testified that he did not realize that an N12 Notice for the same unit was supposed to be included. He did add N12s for other units the same Landlord owns.
16. The Landlord explained that after the Landlord served the prior N12 the Tenant contacted the Landlord and asked for an extension of time till August 31, 2022 to move out. The Landlord agreed and asked her to sign a N11 form to end the tenancy but then she retracted the offer. Since the termination date on the prior N12 notice has passed while the

discussions were going on and the Landlord had not paid the required compensation to the Tenant, he had to serve a new N12 notice.

17. Since the Tenant was fully aware of the previous N12 notice, it is not prejudicial to her to amend the application to add it. It was served for the same reason and purpose as the at issue N12 in this hearing.

Good faith

18. This N12 notice was served pursuant to section 48(1)(c) of *Residential Tenancies Act, 2006* (the 'Act') which states.

48 (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 for a period of at least one year** by,

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

[Emphasis added]

19. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation for at least one year by the Landlord's child.
20. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
21. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC)).

Landlord's Evidence

22. The Landlord provided a declaration signed by Suzanne Miller dated July 19, 2022 stating that she intends to occupy the rental unit for a period of one year in good faith. While the Tenant's Representative asserted that she had not seen the declaration, I find that it had been uploaded by the Landlord into TOP. The Tenant's Legal Representative was sent a copy of the same since she did not have access to TOP.
23. John Miller testified that the rental unit is required for his sister Suzanne Miller who is currently living in the attic at her sister's house and his mother wanted her to move into the rental unit.

24. Cheryl Miller testified that her sister was living in her attic due to her financial situation since she moved back to the area, and she has no issues with her moving into the rental unit as per the wishes of their mother.
25. Suzanne Miller testified that after she moved back into town in 2018, she had no place to go to, so her sister offered her a room in her attic. The room is a small space with a bathroom, but it is not enough for her. She has been paying some rent to her sister and contributing towards bills and groceries. Her mother offered to give her the rental unit so she can have more space and independence.
26. She also testified that she will be paying rent for the rental unit until the estate is settled and that she doesn't believe there is a mortgage on the property. She also added that she will be living at the rental unit for the next twelve months and she's not sure how the estate settles after that.

Tenant's evidence

27. The Tenant testified that she has never met Anne Miller and she only dealt with John Miller. The rental unit is a 3-bedroom space where she lives alone. It is a perfect home for her due to her multiple disabilities.
28. She added that she suffered a concussion in 2019 so her memory is not very good. The Tenant also testified that she does not believe that Suzanne Miller will be residing at the rental unit because there have been instances where the Landlord has come with real estate agents with an intention to sell the rental unit but she does not remember the details or knows the intent of that visit. The Tenant also believes that the notice given to her is an excuse to increase rent and that no one will live there for 12-months.

Good Faith Analysis

29. I find based on the evidence before me, including Suzanne Miller's testimony and that of her siblings, that she genuinely intends to live in the rental unit for at least one year. I accept that her current living situation is not very convenient or comfortable but now she has a job and she can afford to pay for the rental unit.
30. While the Tenant offered some possible alternative reasons the Landlord may be seeking termination of the tenancy, I find that they are speculative, and the Board cannot rely on speculation.
31. Therefore, I find that Landlord in good faith requires possession of the rental unit for the purpose of their child's residential occupation for a period of at least one year.
32. However, the Tenant does have a right to file her own T5 application under s.57 of the Act, within one year of vacating the rental unit, if in fact Suzanne Miller does not move into the rental unit within a reasonable amount of time after the Tenant vacates.

Compensation and last month's rent deposit

33. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022 via a bank draft.
34. The Tenant was required to pay the Landlord daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to March 9, 2023. However, as the Tenant is up to date on the rent no compensation is owing by the Tenant as of the hearing date.
35. Based on the Monthly rent, the daily compensation is \$42.94. This amount is calculated as follows: \$1,306.00 x 12, divided by 365 days.
36. The Landlord collected a rent deposit of \$1,200.00 from the Tenant but this deposit was applied to August 2022 rent as the Landlord understood it to be the last month of the tenancy. The rent in August 2022 was \$1,275.00. Interest on the rent deposit, in the amount of \$95.05 is owing to the Tenant for the period from February 15, 2017 till August 31, 2022. The Landlord therefore still owes the Tenant \$20.05 as interest on last month's rent deposit.
37. The Tenant contested that she had paid August 2022 rent. I agreed to post-hearing submission for the same. I find from those submissions that the Tenant did make a rent payment on August 31, 2022 but it was against September rent and not August rent. Hence, I do find that the last month's rent deposit was applied to the August 2022 rent.

Section 83 considerations

38. 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 September 30, 2023, pursuant to subsection 83(1)(b) of the Act to give the Tenant additional time to find a suitable accommodation.
39. The Tenant testified that she has a number of health issues and limited old-age pension income. The Tenant is afraid of people and fear of leaving the house, she has PTSD, anxiety, short term memory loss, anaphylactic attacks due severe allergy to chemicals and physically disability due to back and knee. She has difficulty answering questions. Her granddaughter does grocery shopping for her.
40. The Tenant also testified that the Landlord did offer her alternate units but because of her disabilities, she cannot live in building where there are multiple people and/or smokers. She needs up to an additional year to find an alternate accommodation that fits her disabilities and her limited income from her old-age pension. She said she was looking for places and has asked other people too, to find a decent living accommodation.
41. The Landlord was willing to extend the termination date by two months.

42. I fully appreciate the Tenant's challenging circumstances and note that this is a no-fault termination of tenancy. I also note however, that the Tenant has been made aware of the Landlord's intentions for some time and that further delay would be prejudicial to the Landlord. I am willing to grant the Tenant six months from the date of hearing due to her circumstances keeping in mind that the Tenant has had time since the notice was served. **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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.
4. The Tenant shall pay to the Landlord \$41.92 per day for compensation for the use of the unit starting March 10, 2023 to the date the Tenant moves out of the unit. Any rent payments that the Tenant has made to the Landlord from March 1, 2023 must be deducted from the amount owing, as does the \$20.05 the Landlord owes the Tenant for interest on the rent deposit.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 5, 2023

Date Issued

Sheena Brar

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 March 30, 2024 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.

