



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

Citation: Lewis v Riley, 2023 ONLTB 29066

Date: 2023-03-30

File Number: LTB-L-049939-22

In the matter of: 615 Sunbird Trail - Upper Unit Pickering
ON L1X2X7

Between: Christopher Lewis Landlord

And

Charmaine Riley

Tenant

Christopher Lewis ('CL' or the 'Landlord') applied for an order to terminate the tenancy and evict Charmaine Riley ('CR' or 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 (N12 notice of termination).

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date. (altogether, the L2 application)

This L2 application was heard by videoconference on February 21, 2023.

The Landlord, the Landlord's Legal Representative, Leon Presner ('LLR'), and the Tenant attended the hearing. There was no Tenant Duty Counsel present in the hearing room during the block to provide consultation services to the Tenant.

Preliminary Matter:

1. As a preliminary matter, the Tenant requested an adjournment because she stated she wanted to find and retain new legal representation. LLR objected to the request, stating the previous representative sent a letter to LLR on January 24, 2023, confirming he was no longer representing the Tenant.

2. Submissions were taken in from both parties which included another objection from LLR respecting the Tenant's late disclosure filing and a statement from the Tenant that she was ready to represent herself at this hearing.
3. I provided my decision to deny the request for adjournment, leaving open the possibility for the Tenant to lead evidence from her late disclosure package, if and as necessary.
4. In my view, the Tenant was aware this hearing well ahead of the scheduled date, and had adequate opportunity to prepare for the hearing. There was nothing submitted to suggest otherwise. I note that the Tenant was also aware that her legal representative was no longer acting for her at least one month prior to the hearing date.
5. To be clear, the Tenant and the Landlord were both mailed a Notice of Hearing by the LTB on February 4, 2023, which according to subsection 191(3) of the *Residential Tenancies Act, 2006* (the 'Act'), means the Notice was deemed to have been served on the parties on February 9, 2023. Both parties confirmed having received the LTB's Notice. Additional reference is made to the Divisional Court's decision in *Toronto Community Housing Corp. v Zelsman, 2017 ONSC 5289*. In that decision, the Court upheld the five-day service of notices when posted by mail.
6. In preparing for this hearing, I was aware of the parties having filed their own applications against one another, including the Tenant having filed a T6 (maintenance) application in October 2021 (still a live application) and the Landlord having filed an L1 (arrears) application in July 2022 (still a live application). In my view, the parties have been embroiled in LTB applications for well over a year, and this fact only went to support my determination to deny the adjournment request, as I believe the Tenant has had ample time to prepare, and that she is aware of the tests to be met under this L2 application.
7. I accepted the Tenant's explanation as to why she filed her disclosure (possible evidence) late and determined she would be able to adduce any relevant evidence during the hearing. It is noted the LTB posted the Tenant's late submissions on the morning of this hearing date, February 21, 2023. The Tenant's submissions comprise, *inter alia*, various utility bills and bill collection notices, exchanged text messages and anecdotal summaries of possible claims going back to 2015/16.
8. The parties then requested that they be transferred to a private video-room to see whether they could resolve the application on their own. They returned to the hearing room unsuccessful. I then called the application forward to be heard on its merits.

L2 Application Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation (for possible overholding) in the application. Therefore, the termination of the tenancy is to be effective as of April 12, 2023, with overholding and eviction enforcement provisions to apply from April 13, 2023 onwards.

2. The Tenant was in possession of the rental unit on the date the application was filed, and is still in possession as of the date of the hearing.
3. N12 Notice of Termination:- On June 10, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on June 10, 2022 with the termination date of August 31, 2022. The notice was given on behalf of the Purchaser(s) who claims that they require vacant possession of the rental unit for the purpose of residential occupation (section 49 of the Act).
4. The L2 application was filed with the LTB on September 1, 2022 and the filing included the N12 notice (referred to in paragraph 3 above), two affidavits of the purchasers, Jason Peterson and Carola Suarez, and proof of compensation payment, as required under subsections 49.1 and 55.1 of the Act.
5. During the hearing, the Landlord confirmed that:
 - the residential complex contains three or fewer units.
 - the Landlord has entered into an agreement of purchase and sale of the residential complex (led as exhibit LL#1)
 - the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation (reference: the two affidavits).
 - the Landlord's representative hand-delivered the one-month's rent compensation cheque under a covering letter on August 30, 2022 to the then legal representative of the Tenant, Paul Mitchell.
6. The Tenant contested the good faith basis of the Landlord's application and underlying notice. She submitted that there is currently another tenant who lives in the basement unit of the residential complex (as of 12/9/22) and so questioned the veracity and credibility of the purchaser's claim that they wanted to move into the rental unit. She also submitted there had been a previous LTB application that had failed for which the Landlord had claimed his "mother" would be moving into the unit. Finally, she claimed one of the purchasers and the Landlord are personal friends and that the purchase agreement is not valid.
7. The Tenant also contested the receipt of the one-month rent compensation. She testified she never received any money from the Landlord in this regard. The Tenant stated that the compensation was taken in by her legal representative, Paul Mitchell, but that her representative never forwarded the money to her.
8. The Tenant also wanted to raise issues in respect of past utility bills that she claimed the Landlord failed to pay, leaving her responsible for high bill amounts, all the while enduring disconnection situations by the utility companies. The Tenant claimed the Landlord has been collecting full rent from the Tenant and the issue of outstanding utility bills simply emphasizes the difficult tenancy she has been living in. The Tenant indicated she wished to lead her evidence respecting the past utility bills (exhibits TT#1a,b,c).
9. In response, the Landlord submitted there is no tenant currently in the basement unit, and confirmed the basement unit is vacant.

10. The Landlord contested the Tenant's claim that she has been paying all of her rent. The Landlord referenced the L1 application that he filed against the Tenant, and stated the quantum of arrears is significant.
11. The Landlord attested that the purchase agreement entered into is a *bona fide* agreement of purchase and sale and the evidence shows this clearly. Both affidavits show that one of the purchasers, Carola Suarez, intends to live in the rental unit for at least one year.
12. The Landlord submitted that the Landlord and the purchasers have changed their closing dates at least three times in the past, the purchasers are still anxious to close and now the parties have negotiated a final closing date on May 1, 2023.
13. With regard to the one-month compensation, the Landlord confirmed the provided cheque was duly cashed by the Tenant via the Tenant's legal representative on August 31, 2022.

If the Tenant's legal representative has not provided the money to the Tenant, the Landlord's position is that the Tenant must take the matter up with her legal representative who may be withholding payment from her.
14. Having considered all of the submissions from the parties, I find that the person who intends to move into the rental unit is one of the purchasers as specified under section 49(1) of the Act. The affidavits speak to the purchasers going through a separation or divorce and that Ms. Suarez is the purchaser who will move into the unit. Whether or not the Landlord knows one or both of the purchasers, in my mind, is not of significant import. The key question before me is whether the purchase agreement is a lawful agreement and whether the purchaser(s) has a good faith intention to occupy the unit for at least one year. I find in favour of the Landlord on both counts.
15. On the claim by the Tenant that the Landlord has failed before the LTB with a separate L2/N12-based application, I was able to find the parties did come before the LTB on November 9, 2021 for a section 49(1) based application. I confirm that an LTB order -case file TEL-18557-21- issued on May 18, 2022. That order clearly shows that the Landlord's application was dismissed solely because the presiding Member was not persuaded that the N12 notice had been properly served on the Tenant. None of the other merits of the application were explored or considered by the presiding Member. In my view, that previous order has no relevant bearing on the L2 application before me.
16. I also find that the Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022. If it is still the case that the Tenant has yet to receive the compensation payment from her former legal representative, that is not something that the Landlord needs to be concerned with or obligated to correct. In my view, the Landlord discharged his statutory obligation to make the one-month compensation payment on time.
17. With regard to the Tenant's claims of past outstanding utility bills and disconnections, I considered the claims/evidence and not find that these claims rise to the level of serious breach of the tenancy as contemplated under subsection 83(3)(a) of the Act. Indeed, if there are outstanding bills and associated claims thereto, the Tenant is certainly able to

assert her legal rights against the Landlord by filing her own application or by making these claims under section 82 of the Act as they may apply.

18. The monthly rent is \$1,500.00. Based on the monthly rent, the daily compensation is \$49.32. This amount is calculated as follows: \$1,500.00 x 12, divided by 365 days.
19. I asked the parties for their circumstances, especially in light of the above findings and the prospect of tenancy termination.
20. 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 12, 2023 pursuant to subsection 83(1)(b) of the Act. I provided this termination date to the parties present.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated in a final (non-remedial) way as of April 12, 2023.
2. The Tenant must move out of the rental unit on or before April 12, 2023.
3. If the unit is not vacated on or before April 12, 2023, then starting April 13, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 13, 2023.
5. If the unit is not vacated on or before April 12, 2023, the Tenant shall pay the Landlord compensation of \$49.32 per day for the use of the unit starting April 13, 2023 until the date the Tenant moves out of the unit.

March 30, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Alex Brkic

Member, Landlord and Tenant Board

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

File Number: LTB-L-049939-22

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 13, 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.

2023 ONL TB 29066 (CanLII)