



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

**Citation:** Datu v Alaimo, 2023 ONLTB 27977

**Date:** 2023-03-27

**File Number:** LTB-L-034762-22

**In the matter of:** 17-80 Ferman Drive  
Guelph, ON N1H 8B3

**Between:** Josephine Datu Landlord

**And**

Augusta Alaimo Tenant

Josephine Datu (the 'Landlord') applied for an order to terminate the tenancy and evict Augusta Alaimo (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 23, 2023.

The Landlord and the Landlord's Legal Representative Jane Dean and the Tenant attended the hearing. Jodre Datu ('JD') testified on behalf of the Landlord.

**Determinations:**

*Preliminary Issue – Compliance with s. 71.1(3)*

1. The Tenant raised a preliminary issue seeking to dismiss the Landlord's application on the basis that the application did not comply with s. 71.1(3) of the *Residential Tenancies Act, 2006* (the 'Act'), as the Landlord's application did not include a previous N13 that was served upon the Tenant in November of 2021, with a termination date of March 31, 2022.
2. The Landlord's Legal Representative acknowledged that the N13 was not included in the application and outlined that the Landlord had simply misunderstood the process and had

never intended to follow through with the N13 as the Landlord had always intended to serve the Tenant with an N12 notice.

3. While s. 71.1(3) does outline that the Landlords application is required to contain these details, s. 71.1(4) outlines the remedy for this defect is that the Board would refuse the application for filing.
4. In considering that the Board has moved to an online service delivery model, whether the Board could determine whether the application required this additional information or not would not be a readily identifiable issue. As such, the Board already accepted the application for filing.
5. That said, all parties including the Tenant were aware of both previous notices and when I consider that the overall aim of this section is to ensure that tenants are fully cognizant of similar notices issued by landlords in order to defend these types of applications, I determined that the aim of the section had been met as the Tenant was cognizant of both prior notices prior to the hearing date.
6. As such, the Landlord's Legal Representative requested an amendment to the application to include the additional N13 and this amendment was granted on consent and the Tenant's motion to summarily dismiss the application was dismissed.

#### *Preliminary Issue – Res Judicata*

7. The Landlord's Legal Representative submitted order SOT-22573-21, which was an application under s. 31 of the Act made by the Tenant.
8. The Landlord's Legal Representative submitted that the Tenant intended on raising issues that had already been determined in the above-noted order and sought to restrict their inclusion on the basis of *res judicata*.
9. As such, the Tenant was directed to focus any issues she intended on raising to issues that were not alleged in order SOT-22573-21.

#### *L2 Application*

10. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated as of June 30, 2023.
11. The Tenant was in possession of the rental unit on the date the application was filed.
12. On June 20, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served June 21, 2023, with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by her son, JD.
13. The unit is a 3-bedroom, 3-floor townhouse that the Tenant has been renting since 2013.

14. The Landlord testified that not only does she require the unit for her son, but she also needs to renovate the unit.
15. The Landlord testified that she received approval from her condo board on August 9, 2021 to renovate the unit and received a building permit from the City of Guelph on December 10, 2021.
16. Entered into evidence was Building Permit # 21 006039 000 that was issued by the City of Guelph to the Landlord on December 10, 2021. The work described is to remove the baseboard heat and install a ducted forced air gas furnace. Also entered into evidence was an invoice from Aire One Heating & Cooling KW that further outlined the work to be completed. The Landlord testified that she has paid a deposit to the contractor.
17. The Landlord submits that the work cannot be completed because the unit is required to be vacant.
18. Further, the Landlord testified that JD is 25 years-old and is still living with her at her house. JD testified that he finished his Masters degree in April of 2021 and has been working remotely from home since that time. JD testified that at his age he would like his own independence and testified that he would live in the unit for a period of at least one year.
19. As well, JD testified that he has a sentimental attachment to the unit as he had grown up there.
20. The Landlord initially served an N13 notice however, she testified that she was unsure which notice to issue as she simultaneously wanted her son to move into the unit and to renovate the unit as early as April 2021 when JD finished school.
21. The N13 was never filed with the Board and the Landlord served an N12 on December 20, 2021, which was dismissed as the Landlord had not paid the required compensation prior to the termination date as required under the Act. The notice with respect to this application was served in June of 2022. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022. The Tenant did not dispute that she was paid the compensation.

### *Tenant's Evidence*

22. The Tenant contests the application and testified that she believes JD will not move into the unit and that the Landlord is seeking to evict her to re-rent the unit for a higher rate.
23. Further, the Tenant testified that she believes the Landlord is taking this route as she had refused to pay an illegal rent increase. As well, the Tenant alleges that the Landlord had wanted to also rent out the basement of the unit as a separate unit however, the Tenant refused.
24. The Tenant also alleges that the Landlord did not follow through with her N13 application because on December 10, 2021, the Tenant exercised her right of first refusal under s. 53

of the Act. 10 days later she then received the previous N12. The termination date of both notices was March 31, 2022, which the Tenant questioned if the unit was not going to be habitable for the renovations, then when would JD have moved in?

### Analysis

25. Interpretation Guideline #12 of the Board's *Interpretation Guidelines* outlines that at the hearing, the landlord must prove, on a balance of probabilities, that he or she in good faith requires the rental unit for the purpose of residential occupation by the person specified in the notice of termination.
26. When deciding "good faith" the Board must consider whether the landlord has a genuine intention to occupy the premises.
27. The question to be answered is what is a landlord to do when they are seeking to both reoccupy their unit and also wanting to renovate their unit. In this case, the Landlord submitted that as early as April 2021 they had intended to have their son move in the unit. Despite this, she first served an N13 notice of termination.
28. The Tenant exercised her right of first refusal and the N13 was effectively withdrawn, and the Landlord proceeded with an N12.
29. The Tenant submits that this is indicative of bad faith and that the Landlord's conduct and motives regarding this issue should draw a negative inference in accordance with *Fava v. Harrison*, 2014 ONSC 3352.
30. That said, the Landlord was asked a very poignant question when she was asked when she had decided she wanted her son to move into the unit, to which she replied in April of 2021. The Landlord further testified that she decided on conducting the renovations in June of 2021, applied to her condo board shortly thereafter, and sought the building permit shortly after that. The Landlord testified that had been contacting contractors since June of 2021 as well.
31. While it is not apparently obvious, I find that the correct notice to have been issued was the N12. At some point, the Landlord learned that she had issued the wrong notice and decided not to proceed with it. Despite this, I find that the Landlord's intention at all times during this process was for her son to move into the rental unit.
32. Further, when the N12 notice of termination with respect to this application was served in June of 2022, I find further that the Landlord's genuine intent was for her son to move into the unit.
33. While the Tenant believes the N12 was served as retaliation for her refusal to agree to the Landlord's request for a rent increase and to rent out the basement, I find this evidence to be speculative in nature.

34. On a balance of probabilities, I am satisfied that the Landlord in good faith requires possession of the rental unit for the purpose of their son's residential occupation for a period of at least one year.

### *Daily Compensation*

35. The Tenant was required to pay the Landlord \$6,191.34 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to February 23, 2023.
36. Based on the Monthly rent, the daily compensation is \$35.18. This amount is calculated as follows: \$1,070.00 x 12, divided by 365 days.
37. The Landlord collected a rent deposit of \$1,020.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$18.65 is owing to the Tenant for the period from June 2, 2022 to February 23, 2023 .
38. 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*

39. The Tenant testified that she has an 18-year-old daughter who resides with her who attends a specialized school in Guelph for people with severe Attention Deficit Disorder. The Tenant testified that her daughter remains in school due to a learning disability.
40. The Tenant is currently working part-time and is also on Ontario Works. She testified that she applied to social housing but has been unable to find any units within her location with comparable rent rates.
41. The Landlord's Legal Representatives submits that the Tenant has had ample time to make arrangements to find a new unit and has asked that the tenancy be terminated by March 31, 2023. I find this request to be unreasonable in the circumstances.
42. This is a no-fault eviction application. The Tenant has requested until the end of the school year in order to find a new unit. I find this request reasonable in the circumstances. I find evicting the Tenant and her daughter now could seriously affect the Tenant's daughter's school year. Further, the Landlord's son currently has somewhere to live and there is no sense of urgency to have him move into the unit, considering the renovations that will take place.
43. 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 June 30, 2023 pursuant to subsection 83(1)(b) of the Act.

### **It is ordered that:**

44. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2023.

45. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
46. 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 July 1, 2023.
47. The Tenant shall pay to the Landlord \$5,152.69, which represents compensation for the use of the unit from September 1, 2022 to February 23, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
48. The Tenant shall also pay the Landlord compensation of \$35.18 per day for the use of the unit starting February 24, 2023 until the date the Tenant moves out of the unit.
49. 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 \$(1,038.65).
50. However, the Landlord is authorized to deduct from amount owing to the Tenant \$35.18 per day for compensation for the use of the unit starting February 24, 2023 to the date the Tenant moves out of the unit.
51. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**March 27, 2023**

**Date Issued**

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Jagger Benham

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 January 1, 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.

