



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

Citation: Navaratnam v Brown, 2023 ONLTB 27873

Date: 2023-03-27

File Number: LTB-L-033482-22

In the matter of: 199 Lady Angela Avenue
Oshawa ON L1L0K3

Between: Anujn Navaratnam Landlord
Sriranjini Navaratnam
Thiru Navaratnam

And

Michelle Susane Brown Tenant
Ted Jason Brown

Anujn Navaratnam, Sriranjini Navaratnam and Thiru Navaratnam (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Susane Brown and Ted Jason Brown (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.

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

The Landlord's legal representative, Rajan Mahavalirajan, and the Landlords attended the hearing.

The Tenants, Michelle Susane Brown (MSB) and Ted Jason Brown (TJB) also attended the hearing on the same device.

Determinations:

1. On March 13, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
2. The Tenant was in possession of the rental unit on the date the application was filed with the Board.
3. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

Preliminary Issue: Compensation Not Paid

4. The Tenants raised a preliminary issue that the compensation was not paid before the date of termination as required by the Act.
5. The position of the Tenants is that they never received the cheque from the Landlord the Landlord claims was sent. MSB stated that sometime after May 31, 2022 she found a notice for delivered registered mail mixed in with other papers in the mail. MSB could not remember the exact date when she discovered the registered mail notice. The Tenant went to the post office to claim the mail, but the employee informed MSB that the mail had been returned as it had not been picked up in the allotted time required after the notice for delivery was posted.
6. The Tenants claim the Landlord compensated them on August 2, 2022 by e-transfer and this does not meet the requirements pursuant to section 48.1 of the Act.
7. The position of the Landlord is that they compensated the Tenant in an amount of \$1,800.00 in the form of a bank draft dated May 19, 2022. The Landlord sent the bank draft to the Tenant by registered mail on May 24, 2022.
8. The Landlord submits that allowing for 5 days for registered mail the Tenant would have received it on May 29, 2022 which would have met the requirements for the Landlord to compensate the Tenant before the termination date in the N12 notice of May 31, 2022.
9. The Landlord supported their claim by submitting the Canada Post receipt that shows they paid for registered mail and did so on May 24, 2022.
10. The Landlord submitted into evidence a copy of the bank draft dated May 19, 2022.

THE ACT AND ANALYSIS

11. Section 191 of the Act states that “a notice or document is sufficiently given to a person other than the Board, by sending it by mail to the last known address where the person resides or carries on business.
12. The Board’s Rules of Procedure: *When Documents are Served* 3.9 states “... A document is considered served on the a. fifth day after mailing.”

13. I am satisfied based on the evidence submitted by the Landlord, that the Landlord allowed for 5 days for mailing pursuant to section 191 and the cheque was delivered to the Tenants' rental unit before the termination date of May 31, 2022. The Landlord allowed for the 5 days mailing in accordance with the Rules of Procedure 3.9. The fact that the Tenant failed to claim the registered mail before it was sent back does not support their claim the Landlord did not fulfil their obligations with respect to compensating the Tenant.
14. The Landlord later compensated the Tenant on August 2, 2022 by way of e-transfer to replace the bank draft payment that was returned after the Tenants failed to collect the registered mail containing the compensation cheque from Canada Post.
15. With the evidence before me and on a balance of probabilities I find the Landlord in good faith, met their requirements pursuant to the Act and provided compensation to the Tenant before the termination date in the N12 Notice of May 31, 2022.
16. The Tenants' claim they were not compensated is dismissed.
17. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022.
18. The Landlord collected a rent deposit of \$1,800.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$61.92 is owing to the Tenant for the period from April 1, 2021 to February 21, 2023 .
19. 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.

TENANTS BELIEVE NOTICE SERVED IN BAD FAITH

20. The position of the Tenants is that the Landlord served the N12 notice in bad faith after the Landlord attempted to raise the rent and the N12 served was in retaliation to the rent increase.
21. To support their claim the Tenants submitted into evidence a photo of a text message exchange between the Landlord and the Tenant dated February 6, 2021.
22. The position of the Landlord is that the Landlord and Tenant agreed to increase the rent on consent for the April 2021 to March 2022 period but no further increase was applied up to the day of the hearing.
23. The Tenant testified the increase in rent was on consent.

24. The Landlord submits that the N12 was filed due to the needs of the Landlord to move out of the crowded house he lives in now with his relatives.
25. The Landlord submits that there was no further discussion of rent increase since the 2021 period, so the N12 could not have been served in retaliation to another rent increase as claimed by the Tenants.
26. With the evidence before me and on a balance of probabilities I find the Landlord did not serve the Tenants an N12 notice in bad faith.
27. The parties consented to increase the rent sometime before April 2021. The Landlord served the N12 notice to the Tenants on March 13, 2022, almost a year after the agreed rent increase.
28. The Landlord also submitted that the Tenants are not in arrears.
29. The service of the Landlord's N12 on the Tenants does not fit the behaviour of a notice served in bad faith as the rent increase occurred almost one year before the Landlord served the Tenants with the N12 notice and the increase was on consent.
30. The onus rests with the Tenants to provide sufficient evidence to support their claim the Landlord served the N12 notice in bad faith in retaliation for the rent increase. I do not find the Tenants evidence persuasive enough, relying solely on their oral testimony they believe the Landlord served the N12 notice in bad faith. The Tenants' lack of evidence is such that I am not satisfied the Tenants have met that burden of proof and there fore the Tenants claim the Landlord served the N12 notice in bad faith is dismissed.

RELIEF FROM EVICTION

31. The position of the Landlord is that he is currently renting a room and living in his aunt's house with her spouse and their 2 children.
32. The Landlord testified he wanted to move into the house with his partner so they can plan their wedding and start a life together.
33. The position of the Tenants is that they have 3 children in school and moving may require them to have to move their children to a new school for only a few months if they are evicted before the school year ends.
34. The Tenants are saving to buy a house and have been working with a financial planner to save enough money for a down payment on a house and they have been working to increase their credit score to be eligible for a mortgage.
35. The Tenants requested an extended eviction date to August 31, 2023 so they could find new housing and a new school for their children, if necessary, which would allow the children to start fresh in a new school. The August 31, 2023 date would also allow the Tenants time to meet their financial goals in order to purchase their own house.

36. The Tenants did submit any documentary evidence for my consideration with respect to their financial plan.
37. In making my final decision I weighed the Landlord's current living situation against his request for an 11 day order for eviction and the impact to the Tenants' children disrupting their current school year. I also considered the Tenants' request for a longer delay of eviction to allow them time to adhere to their financial plan and potentially have to find a new school for their children if they were evicted before the school year ended.
38. The Landlord testified that he wanted to get the house arrangements settled before the wedding. During my questioning the Landlord testified there was no wedding date confirmed and he and his girlfriend were not yet engaged.
39. While I understand a delayed eviction may present some inconvenience to the Landlord, I don't find it rises to the level of granting the Landlord the request for an 11 day eviction of the Tenants. In my opinion evicting the Tenants with their 3 children near the end of the school year outweighs the inconvenience to the Landlord for a delayed eviction, however I do not find the Tenants request reasonable asking for an extended eviction date of August 31, 2023 when the school year ends in June.
40. 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.
41. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
42. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 June 30, 2023.
2. 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.
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 July 1, 2023.

4. 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 \$(1,861.92).
5. However, the Landlord is authorized to deduct from amount owing to the Tenant \$59.18 per day for compensation for the use of the unit starting February 22, 2023 to the date the Tenant moves out of the unit.
6. 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

Greg Brocanier

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.