



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

Citation: Gargano v Surti, 2023 ONLTB 26036

Date: 2023-03-21

File Number: LTB-L-038233-22

In the matter of: Basement Unit, 193 KILLIAN RD Maple
ON L6A1A8

Between: Karyn Gargano Landlord
Luigi Gargano

And

Navna Surti Tenant

Karyn Gargano and Luigi Gargano (the 'Landlord') applied for an order to terminate the tenancy and evict Navna Surti (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 March 8, 2023.

The Landlord, their representative Trevor Scheib and witness Beverley Shachar and the Tenant attended the hearing.

The Tenant spoke with Tenant Duty Counsel.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy shall be terminated as detailed below.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The rental unit is a basement apartment in a single family home. The Landlord lives in the upper unit.

Preliminary Issue – Certificate of Service

4. When the matter was called on the date of the hearing, the Tenant was not present. I raised as a preliminary issue, the fact that the certificate of service indicated the N12 notice of termination was “placed at the base of front door and held in place with a rock.” As explained to the parties, this is not an approved method of service and the fact that the matter was uncontested means that I have no indication that the Tenant actually received the notice of termination.
5. The Landlord’s representative requested some time to locate email correspondence which will prove that the Tenant acknowledged the N12 notice of termination. The matter was stood down.
6. When the matter reconvened, the Tenant was in attendance and did not dispute service of the N12 notice.

N12 Notice of Termination – Landlord’s Own Use

7. On June 30, 2022, the Landlord gave the Tenant an N12 notice of termination 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 the Landlord, Karyn Gargano’s mother.
8. As per s.72(1) of the Act, the Landlord filed with the Board affidavits from both Landlords and the mother of Karyn Gargano who intends to reside in the rental unit for no less than one year.
9. The Landlord has complied with s.48.1 and 55.1 of the Act by providing the Tenant with compensation equivalent to one months rent on or before the date of termination specified in the notice of termination.
10. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement set out in s.48(1) of the Act which provides:

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;

The Landlord’s Good Faith Intention

11. The onus is on the Landlord to establish that the Landlord in good faith require the rental unit for the purpose of residential occupation.

12. 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 Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...
13. Thus, the Landlord must establish that they genuinely intend to use the rental unit as detailed in the N12 notice. The Court also held in *Salter* that the Landlord's motives are "largely irrelevant".
14. It was the testimony of the Karyn Gargano that she intends to have her mother move into the rental unit. She said that her father passed away around May 2022 and would like her mother to move in to be closer and to allow them to support each other. She also said that her mother will be an asset in assisting with child care needs with her grandchildren who reside at the residential complex. Her mother is currently residing with the Landlord's sister.
15. The Landlord's witness Beverley Shachar and mother to the Karyn Gargano said that she intends to move into the rental unit for no less than one year. She testified that after losing her husband, she moved in with her other daughter and is currently living in less than ideal circumstances as she does not have a private space and has to share sleeping facility with her granddaughter. She also said that moving into the rental unit will allow for her own private space and the ability to provide support to each other.

The Tenant's Testimony

16. The Tenant takes the position that the Landlord served the N12 notice in bad faith, that they merely want to increase the rent via a new tenancy and that the mother will not move into the rental unit.
17. The Tenant did not lead any evidence to support this proposition by way of rental advertisements, listings nor any communications.
18. Although the Tenant took the position that the Landlord wanted to evict her to allow a new tenancy with higher rent, she provided no further evidence to support the proposition that the Landlord did not intend to move her mother into the rental unit.

The Intention of the Landlord

19. The matter before me is whether the Landlord served the Tenants with an N12 notice in bad faith and if the Landlord intends to move her mother into the rental unit.
20. The reasonableness of the Landlord's intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), 1992 CanLII 7625 (ON SC), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A landlord need not establish that his requirement is reasonable, only that he bona fide wanted and genuinely had the immediate intention to occupy.

21. I find therefore that the reasonableness of the Landlord's intention to move her mother into the rental unit not relevant to the issues of intention or good faith.
22. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony nor the testimony of the witness. I am therefore satisfied on a balance of probabilities that the Landlord, in good faith, requires possession of the rental unit for the purpose of residential occupation and that she intends to move her mother into the rental unit for a period of one year.

Last Month's Rent Deposit

23. The Landlord collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$8.30 is owing to the Tenant for the period from July 1, 2021 to March 8, 2023.
24. 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.

Relief from eviction

25. I turned my mind to the circumstances of the tenant to determine the termination date. I considered the length of tenancy and effort made to find alternative housing as well as the Tenant's circumstances.
26. The Tenant said that she has looked for alternative housing and has visited approximately 4 to 5 properties but they did not meet her needs for various reasons. She said that she does not have family nor friends who could assist with temporary accommodation.
27. The Tenant said she needs a specific location to be close to her children and is requesting a 6 month delay for eviction.
28. The Landlord opposed this request on the basis that the Tenant has know of the situation with her tenancy since June 2022 and has made little effort to find alternative arrangements.
29. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

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 15, 2023.

2. If the unit is not vacated on or before April 15, 2023, then starting April 16, 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 16, 2023.

March 21, 2023

Date Issued

Dana Wren

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 16, 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.