



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

Citation: AHMAD v GILLIS, 2023 ONLTB 18507

Date: 2023-02-13

File Number: LTB-L-033521-22

In the matter of: 648 YORK STREET
CORNWALL ON K6J4A3

Between: NASEEM AHMAD Landlord

And

PATRICK GILLIS Tenant

NASEEM AHMAD (the 'Landlord') applied for an order to terminate the tenancy and evict PATRICK GILLIS (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 November 1, 2022.

The Landlord and the Tenant attended the hearing.

Determinations:

PRELIMINARY ISSUE: N12 NOT SERVED TO TENANT; NOT GIVEN 60 DAYS NOTICE

1. At the hearing the Tenant submitted that he never received an N12 notice from the Landlord on February 28, 2022 and only received the N12 notice with his notice of hearing package sent by the Board the week prior to the hearing.
2. The position of the Landlord is that he properly served the Tenant with the N12 notice on February 28, 2022, with the termination date of April 30, 2022. The Landlord submitted as evidence to the Board a copy of the N12 notice and the certificate of service to support his claim the Tenant was properly served.
3. The Landlord also provided testimony to support this claim, that when he served the Tenant he did so by handing the N12 notice to the Tenant on February 28, 2022 when he was at the rental unit. The Landlord provided details regarding the day and circumstances by which he handed the N12 notice to the Tenant.

The Act and Analysis

4. Pursuant to section 48 of the Residential Tenancies Act, 2006 (the 'Act'):

(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 by,

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

(2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

5. Pursuant to section 191 of the Act:

How notice or document given

191 (1) A notice or document is sufficiently given to a person other than the Board,

(a) by handing it to the person;

6. The N12 notice gives the Tenant over 60 days' notice. Rent is due on the 1st day of each month and so the termination date in the notice is the last day of a rental period.

7. With the evidence before me and on a balance of probabilities if find the Landlord did serve the Tenant with a valid N12 notice. The Landlord's evidence support his testimony and I am convinced by the details the Landlord provided on the circumstances of how and when he served the Tenant. The Landlord's details and particulars are such that I find he has met the burden of proof to support his claim and the Tenant's claims are dismissed.

8. While moot, I note that the Tenant later testified he actually couldn't recall the exact date and details the Landlord served the N12 notice and had no evidence to support his claim.

PRELIMINARY ISSUE: COMPENSATION NOT PAID

9. Pursuant to section 48.1 of the Act a landlord who has served an N12 notice is required to give the tenant compensation in the amount of one month of rent. Section 55.1 of the Act requires a landlord who is obligated to give compensation to a tenant under s.48.1 to pay that compensation no later than the termination date in the N12 notice.

10. There is no dispute the Landlord attempted to pay compensation to the Tenant equal to one month's rent in the form of a money order in the amount of \$500.00 prior to the termination date set out in the N12 notice.
11. The Landlord testified the Tenant would not accept the money order when he tried to give it to him.
12. A Tenant's refusal of compensation is not a basis for the Board to dismiss the Landlord's application. The Landlord in good faith attempted to compensate the Tenant pursuant to the Act and has met his obligation with respect to section 48.
13. The Tenant's claim the Landlord did not compensate him in the amount equal to one month's rent is dismissed.
14. I will address the compensation to be paid by the Landlord to the Tenant in the "It is ordered" section of this order.

PRELIMINARY ISSUE: TENANT CLAIMS N12 IN BAD FAITH

15. The Tenant claimed the Landlord served the N12 in bad faith and does not intend to use the unit.
16. The Tenant provided no evidence to the Board to support his claim.
17. The Landlord's position is that he requires vacant possession of the rental unit for the purpose of residential occupation.
18. The rental unit is comprised of a 2 story building with 2 apartments above a commercial retail business on the main level. The 2 apartments are self contained and each have their own one bedroom, kitchen and bathroom. The commercial retail business is owned by the Landlord.
19. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC) where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
20. The Landlord submitted an affidavit with his application that he in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year. The Landlord provided testimony that he runs the retail business on the main level of the building. The Landlord lives in Montreal and works the store three days a week, while his son works the other four days. The Landlord testified that he sleeps on a cot in the store on the nights he stays over but as he is getting older, he is unable to

continue to do this. The Landlord testified that he requires the rental unit for residence so he does not have to sleep on a cot in the retail store or commute every day from Montreal in the morning then back to Montreal late in the evening.

21. I do not consider that the Tenant substantively challenged the Landlord's good faith intention and the Tenant provided no evidence to the Board to support his claim the Landlord does not intend to occupy the rental unit for a period of at least one year.
22. The Landlord did not collect a last month's rent deposit.
23. The Landlord is not seeking daily compensation for the rental unit after the date of termination on the N12 notice.

RELIEF FROM EVICTION

24. The Tenant is not employed and his source of income comes from OA, CPP and Trillium. The Tenant is 68 years old and has been in the unit for 14 years. The Tenant has no children living in the unit with him, or any persons with special needs. The Tenant claims he has no family or friends to live with and while the Tenant has a daughter the Tenant submitted that she only has a one bedroom rental unit and that she would not be able to accommodate him. On the day of the hearing the Tenant was recently in an auto accident but provided no medical evidence of his current medical needs or status.
25. The Tenant stated he would need until May 31, 2023 to find a new suitable rental unit.
26. Weighing the Landlord's current situation of sleeping on a cot three days a week against the Tenant having to find a new housing on his income, I considered the impact to both parties on a long delay order of eviction. While it may be an inconvenience for the Landlord to continue to sleep on a cot, the impact to the Tenant of having to move from his rental unit of 14 years, and find suitable housing is, in my opinion, reason enough to consider the Tenant's request for a delay of eviction. I considered the prejudice to the Landlord on a long delay of eviction, as requested by the Tenant compared to the Tenant's task of finding new housing and I am granting the Landlord his request for eviction, however I am delaying the eviction to allow the Tenant time to find new suitable housing.
27. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
28. 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.
29. 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, as of March 31, 2023. The Tenant must move out of the rental unit on or before March 31, 2023.
2. If the Landlord has not already done so, the Landlord shall pay to the Tenant the amount equal to one month's rent in the amount of \$500.00 on or before March 1, 2023.
3. If the unit is not vacated on or before March 31, 2023, then starting April 1, 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 1, 2023.

2023 ONLTB 18507 (CanLII)

February 13, 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.