



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

Citation: Bruinsma v Fuller, 2023 ONLTB 19081

Date: 2023-02-09

File Number: LTB-L-010576-22

In the matter of: 2nd Floor, 220 MARY ST N
OSHAWA ON L1G5C4

Between: Stewart Bruinsma Landlord

And

Janet Fuller Tenant

Stewart Bruinsma (the 'Landlord') applied for an order to terminate the tenancy and evict Janet Fuller (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 September 8, 2022. The Landlord, their legal representative, D. Greanya, the Tenant, and their legal representative L.Thibert attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is granted, and the tenancy shall terminate.

PRELIMINARY ISSUE

2. At the outset of the hearing, the Tenant's representative raised a preliminary issue with respect to the Landlord's application. They submitted that the Landlord failed to comply with section 71.1 (4) of the *Residential Tenancies Act, 2006* (the 'Act'), which essentially says that a Landlord who files an application such as this must indicate whether the Landlord has within two years, given any other notices with respect to section 48, 49, or 50. If the Landlord has not complied with section 71.1 (3) then the Board shall refuse to accept the application for filing.
3. The Tenant's representative stated that in the Landlord's application they noted the N12's served on the Tenant October 19, 2021 and May 13, 2021, however the Landlord did not include the N12 served October 14, 2021. Since the Landlord did not include all notices

served on the Tenant in the last two years the Board should have refused to accept the application and the hearing should not proceed.

4. I canvassed the Landlord with respect to the omission of the third notice from the application. He stated that it was an oversight and stated that the other two prior notices were brought to the Board and dismissed due to clerical issues- the Landlord included the file numbers to those applications in this one.
5. For the following reasons, despite the submissions made by the Tenant's legal representative, I allowed the application to proceed. I accept the submission of the Tenant's legal representative that the Board may have been in a position to reject the filing of the Landlord's application due to his failure to disclose all notices served in a two year period.
6. The Act does not provide a clear consequence for a landlord's failure to meet their disclosure obligation under subsection 71.1(3). Subsection 71.1(4) provides that "The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)", but does not expressly address what happens when the Landlord has completed the appropriate section of the application, but has omitted one or more N12 or N13 notices.
7. In my view, the purpose of section 71.1 (3) and subsection (4) of the Act is to provide the Board with clarity regarding the history of the tenancy and so that the Board can observe the conduct of the Landlord. Adopting a purposive approach I do not see that this omission prejudices the Tenant in any way. I say this because the Tenant obviously knew the notices served upon them and they are provided the opportunity to lead viva voce evidence and cross examine the Landlord on this issue. As such, I allowed the application to proceed on its merits.

L2 APPLICATION

8. The Tenant was in possession of the rental unit on the date the application was filed.
9. On February 7, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 14, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
10. The Landlords filed a declaration with the Board supporting their intentions to move into the rental unit and reside there for a period of at least one year.
11. There was no dispute that the Landlord has compensated the Tenant an amount equal to one month's rent by April 14, 2022.
12. There is no last month's rent deposit.

Does the Landlord Genuinely Intend to Move into the Rental Unit?

13. The first question to be answered on an application like this is whether or not the Board believes the Landlords genuinely intend to move into the rental unit.
14. The Landlord testified that the property was built in 1912 and had been converted into a duplex prior to him owning the property. He was served a notice by the City of Oshawa

indicating that the property is currently operating as a single detached dwelling with two accessory units, for a total of three separate dwelling units. The lawful use of the is a single detached dwelling with on registered accessory unit. The Landlord submitted that rather than completing repairs needed to comply with the notice of violation he would rather move into the dwelling and use it for his own residential occupation.

15. The composition of the residential complex is three units: a 1st floor unit, a 2nd floor unit, and a 3rd floor that is a living space. The Tenant's claim it is a unit, the Landlord claims it is not. The 1st floor unit is vacant and the 3rd floor unit is empty.
16. During cross examination of the Landlord's testimony, he was asked extensively regarding his intentions to occupy the property, other properties that he owns, and the previous N12 notices of termination served.
17. The Landlord did not deny that in the past he had advertised the 3rd floor unit with AirBNB and that the 1st floor was vacant. Nor did he deny that he owned another property in Oshawa.
18. The Landlord went through the other N12 notices served. The first N12 notice had a termination date of July 15, 2021, the Landlord submitted that the application was dismissed as he failed to pay the one month's compensation prior to the termination date. The second N12 had a termination date of December 15, 2021, that was not acted on, the third N12 had a termination date of January 14, 2022, and was also not acted on.

ANALYSIS

19. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
20. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".

21. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."

22. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

"We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue

is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

23. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
24. It was clear from the Tenant’s evidence that they did not feel that the Landlord had not served the notice in good faith as they testified that the Landlord had other properties as well as the Landlord had previously listed one of the units with AirBNB and rented it out to other people who were not tenants.
25. The fact that the Landlord owns other properties, that there are other vacant units, and that the Landlord rented out another unit with AirBNB is not overly relevant to my analysis of the intention to occupy the rental unit. As already stated, the Landlord may have many motives for serving a notice of termination and are entitled to do so.
26. I accept the Landlord’s evidence that he intends to move in and intends to use the entire property for his own personal use. I am therefore satisfied that the notice was given in good faith and the tenancy will terminate.

RELIEF FROM EVICTION

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 February 28, 2023 pursuant to subsection 83(1)(b) of the Act.
28. The Tenant has lived in the rental unit approximately 5 years. The Tenant lives in the rental unit with her partner and testified that the housing market in Oshawa is particularly difficult. The Tenant requested at the hearing for 4 months of additional time to find a new rental unit. Given the date of this order, the Tenant has essentially been given what they asked for at the hearing.
29. In consideration of both parties’ circumstances, I find this termination date to be appropriate. The Tenants have been granted addition time to secure a rental unit and the delay is not so lengthy that would prejudice the Landlords.
30. This Order contains all the reasons for this matter. No further reasons will issue.

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 February 28, 2023.

2. If the unit is not vacated on or before February 28, 2023, then starting March 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 March 1, 2023.

February 9, 2023

Date Issued

Curtis Begg

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 September 1, 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.