



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

Citation: Ryjikh v Barber, 2023 ONLTB 15622

Date: 2023-01-16

File Number: LTB-L-022842-22

In the matter of: basement room 1, 240 VERMONT ST
WATERLOO ON N2J2N3

Between: Vasilli Ryjikh Landlord

And

Drew Barber Tenant

Vasilli Ryjikh (the 'Landlord') applied for an order to terminate the tenancy and evict Drew Barber (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 January 12, 2023 at 9:00 a.m.

Only the Landlord attended the hearing.

As of 3:31 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below I am dismissing the Landlord's application.
2. This application is based on an N12 Notice of Termination - Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental. The N12 Notice had a termination date of May 1, 2022.

Incorrect Termination date

3. The Landlord testified that this a month-to-month tenancy with the rent due on the 1st day of each month. Therefore, each month is a period of the tenancy.

4. The N12 Notice was served under s.48 of the *Residential Tenancies Act, 2006* (the “Act”) which states, in part:
- (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 for a period of at least one year by,
- (a) the landlord;
- (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.
- [Emphasis Added]
5. The termination date on the N12 is May 1, 2022, which is not the last day of a period of the tenancy as required by s.48(2) of the Act. As this is a month-to-month tenancy with the rent due on the 1st day of each month, the last day of each month is the last day of a period of the tenancy. Therefore, the N12 Notice is defective.

Invalid Service Method

6. The Landlord’s Certificate of Service states that the N12 Notice was served on the February 1, 2022 by being “EMAILED FEB 1ST. PAPER COPY DELIVERED IN PERSON BY PM A FEW DAYS LATER”. The Certificate of Service was signed by Vasilli Ryjikh – the Landlord.
7. Landlord and Tenant Board Rule of Procedure, states that a document may be served on a person or party by “email if the person or party receiving it has consented in writing to service by email”.
8. At the hearing the Landlord did not submit any evidence to support that he had written consent in writing to communicate with the Tenant in writing.
9. The Certificate of Service also stated that a paper copy of the Notice was delivered by the “PM” a few days later. The Landlord explained that the PM was not available and no details of secondary delivery were provided.
10. I find that the Landlord did not have consent to serve the Tenant with the N12 Notice by email, nor was actual method or date of delivery established. For the reasons noted I am dismissing the Landlord’s application.
11. At the hearing the Landlord testified that the Tenant vacated the rental unit on December 1, 2022. The Landlord requested compensation for each day the Tenant stays in the unit after the termination date as stated in the Notice of Termination. As the application is being dismissed, the Board cannot grant compensation.
12. In addition, the Landlord submitted that has filed additional application for rent arrears, which was not before me at the hearing. The compensation/rental arrears is more appropriately heard pursuant to the Landlord’s application for rent arrears.

It is ordered that:

1. The Landlord's application is dismissed

January 30, 2023
Date Issued

Peter Pavlovic
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.