



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

Citation: Giri v Rusanova, 2023 ONLTB 14096

Date: 2023-01-06

File Number: LTB-L-039865-22

In the matter of: 1505, 1328 BIRCHMOUNT RD
SCARBOROUGH ON M1R 0B6

Between: Rohit Giri Landlord

And

Alya Rusanova Tenants
Jihad Ma Salem

Rohit Giri (the 'Landlord') applied for an order to terminate the tenancy and evict Alya Rusanova and Jihad Ma Salem (the 'Tenants') because:

- the Tenants did not pay the rent the Tenants owe (L1 Application).
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenants.
- the Tenants, another occupant of the rental unit or a person the Tenants permitted in the residential complex has seriously impaired the safety of any person and the act or omission occurred in the residential complex;
- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has wilfully caused undue damage to the premises;
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 Application).

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on September 6, 2022 at 11:00 a.m.

The Landlord Rohit Giri, his representative Rajan Mahavalirajan, licensed paralegal and the Tenant Alya Rusanova and her interpreter Robert Grujicic attended the hearing.

Preliminary Issue:

Preliminary Matter: Standing of Mr. Grujicic

1. Mr. Grujicic attended the hearing and provided evidence that he is the partner of the Tenant Alya Rusanova and was provided with the opportunity to give evidence as to his

standing in the hearing and to demonstrate he had authorization to represent the Tenant in the proceeding.

Mr. Grujicic's Evidence

2. Mr. Grujicic submitted he was both a Tenant and was attending to be an interpreter for the Tenant a party to this application.

Mr. Grujicic's status as a Tenant

3. I asked Mr.Grujicic if he was on the lease, and Mr. Grujicic responded 'No.'
4. Mr. Grujicic testified he lived in the unit with the Tenant, Ms. Rusanova and has lived there for several months.
5. Mr. Grujicic further testified that the Landlord knew about the change in Tenancy; whereas, Mr. Salem, the Tenant named on the lease had moved out and Mr. Grujicic had moved in and submitted this was substantiated during a joint meeting on or about May 20, 2022 attended by Mr. Grujicic, the Tenant and the Landlord where they confirmed the new arrangement and signed a new lease.
6. I asked Mr. Grujicic to clarify whether he was on the lease, given his previous testimony stating he was not. At this point, Mr. Grujicic clarified he was on a 'new' lease that was allegedly signed on May 20, 2022.
7. When I asked Mr. Grujicic if he had a copy of the lease, Mr. Grujicic submitted he had taken pictures but recently switched devices and did not have them at this time.

Mr. Grujicic's status as an interpreter

8. Mr. Grujicic testified that the Tenant, Ms. Rusanova required an interpreter as English is not her first language and she required assistance with translation from English to Russian. The Tenant confirmed same.

Landlord's Evidence

Mr. Grujicic's status as a Tenant

9. The Landlord submitted that Mr. Grujicic was not a Tenant and therefore not a party to this application.
10. The Landlord testified the unit was rented to two parties, Alya Rusanova and Jihad Ma Salem and they were the Tenants. The Landlord further submitted did not know Mr. Grujicic was an occupant of the unit until the date of the hearing.
11. The Landlord submitted that in consultation with the property management company he understood that there were regularly several men coming and going from the unit.

12. The Landlord testified they had not received any advanced notice or information about Mr. Grujicic attending the hearing or claiming he was a Tenant.
13. Contrary to the testimony provided by Mr. Grujicic, the Landlord submitted Mr. Grujicic was not on the lease.

Mr. Grujicic's status as an interpreter

14. There was no dispute to Mr. Grujicic's role as an interpreter for the Tenant.

Analysis

15. I am not satisfied on a balance of probabilities that Mr. Grujicic is a tenant in the rental unit.
16. Beyond his stated testimony at the hearing, Mr. Grujicic did not provide records or evidence related of the alleged events to substantiate his testimony; nor, did Mr. Grujicic provide any evidence he had attempted to reach out to the Board, or the Landlord, or the Landlord's representative in advance of the matter. The lease that Mr. Grujicic alleges he signs ought to have been easily producible for this matter. I reject Mr. Grujicic explanation regarding why the lease wasn't submitted as evidence as unbelievable. Even if true, the failure to either serve the documents in advance of the hearing or request an adjournment upon discovering the unavailability of such key evidence was unreasonable.
17. I find that Mr. Grujicic provided contradictory testimony regarding whether he had signed a lease and this impacted the credibility of his testimony.
18. I find that on a balance of probabilities, Mr. Grujicic is an occupant of the unit, not a Tenant and therefore Mr. Grujicic has no standing in this matter as a Tenant.
19. Since Mr. Grujicic had no standing as a Tenant, the hearing proceeded with only the Landlord and Tenant's evidence. Mr. Grujicic's continued in a limited role as an interpreter, and he was sworn in as such.

Preliminary Matter: Request to Adjourn

20. As a preliminary matter, the Tenant requested an adjournment of the proceedings citing a lack of time to collect information and prepare for the hearing and having not received the notices of termination.
21. Taking in submissions from both parties at this hearing, I denied the adjournment with reasons to follow. These are my reasons.

Tenant's Evidence

22. The Tenant, Ms. Rusanova denied receiving a copy of the notices served on June 30, 2022 (N4, N5, N7, N12) and July 15, 2022 (2nd N5) citing that the Tenant, Mr. Salem, her partner was in the hospital and because she was visiting him, did not have time check the mail; and further, even if the Tenant did have time to check the mail the Tenant

testified she would not be able to access the mail as the lock to the mailbox had been switched without her notice.

23. The Tenant testified she only recently received renewed access to the mailbox.
24. The Tenant did however acknowledge receiving the Notice of Hearing on July 21, 2022.

Landlord's Evidence

25. The Landlord's representative objected to the adjournment due to the prejudice an adjournment would cause the Landlord. It would delay obtaining possession of the unit for him and his family, which is the relief sought on N12 portion of this application. The Landlord argued the Tenants have had more than enough time to prepare for a hearing and that all evidence had been disclosed in a package to the Tenants at least 7 days before the hearing.
26. The Landlord testified that he met with both Tenants Ms. Rusanova and Mr. Salem on August 17, 2022 at his representative's office and reminded them about the upcoming hearing. At this meeting, both Tenants signed a N9 and a N11 with a Termination date of August 18, 2022. The N9/N11 agreements were submitted into evidence. The Landlord testified that during this meeting the group discussed that there is a hearing scheduled for September 6, 2022 and the Landlord testified he informed the Tenants, should the Tenant's not move out, the Landlord will move forward with the hearing.
27. The Landlord also pointed to the Certificates of Service which stated the notices were not placed in the mail, but placed under the door of the rental unit, or through a mail slot in the door. He submitted therefore that the Tenant's evidence about the mailbox lock being changed without notice was irrelevant insofar as it relates to receiving the notices as they were not served in that manner.

Analysis

28. Section 183 of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
29. I find the Tenant's testimony lacks credibility with respect to accessing and receiving the notice through the mailbox. Moreover, the Tenant provided no specific evidence related to the date access was denied, the date it was reinstated and the steps the Tenants took to gain access to the mailbox or which dates they alerted the Landlord about this issue.
30. I accept the Landlord's evidence about meeting with the Tenants as well as their Certificates of Service. I am satisfied that the notices were served in accordance with the Act.
31. I further find that the Tenants received adequate notice of the hearing in the circumstances. Both sides were present at the hearing and the Tenant had received the Landlord's evidence 7 days before the hearing in accordance with Board's Rule of Procedure 19.

32. I am therefore satisfied that the Tenant has adequate notice of this matter.

33. For the reasons above, the adjournment request is denied.

Determinations:

1. On June 30, 2022, the Landlord gave the Tenants an N4 notice of termination with the termination date of July 15, 2022, claiming the Tenants did not pay the rent the Tenant's owe.
2. On June 30, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of September 30, 2022. The N12 notice indicates the Landlord requires the rental unit for their own residential use as well as his spouse and child.
3. On June 30, 2022, the Landlord gave the Tenants an N7 notice of termination with the termination date of June 30, 2022. The N7 notice indicates the Tenants or their occupant or guest has seriously impaired the safety of a person in the residential complex and wilfully caused undue damage to the premises.
4. On June 30, 2022, the Landlord gave the Tenants an N5 notice of termination with the termination date of July 21, 2022. The N5 notice indicates the Tenants or their occupant or guest has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant.
5. On July 15, 2022, the Landlord gave the Tenants a second N5 notice of termination with the termination date of July 31, 2022 seeking immediate eviction indicating the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenants.
6. The Landlord filed a L1/L2 Application on July 16, 2022 seeking eviction, repayment of arrears \$6,550.00 and compensation for each day the Tenant stays in the rental unit
7. On August 17, 2022 the Landlord and Tenant signed an N9 Tenant's Notice to End the Tenancy and an N11 Agreement to End the Tenancy with a termination date of August 18, 2022 on each.

N12

8. As noted above, the Landlord served the Tenant with a N12 notice on June 30, 2022. The N12 notice gave a termination date of September 30, 2022. The N12 notice indicates the Landlord requires the rental unit for their own residential use as well as his spouse and child for at least one year.
9. I am satisfied Ms. Rusanova and Mr. Salem were in possession of the unit at the time the notice was served.
10. Pursuant to section 48(1) of 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,
 - (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.

11. I am satisfied that the N12 complied with the notice and end of term requirements in section 48(2).

Good Faith

12. The main issue to be determined on this application is whether the Landlord has satisfied the “good faith” requirement in s.48(1) of the Act.
13. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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.
14. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are “largely irrelevant”, however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.
15. The Landlord testified this unit is a single unit within a large residential complex that includes approximately fifteen stories. The Landlord further testified he is currently temporarily living with a friend, and but for this unit, he does not have another option for he and his family.
16. The Landlord further testified he intends to move into the unit being occupied by the Tenant for more than one year, because after five years of navigating the application process, his family has recently received permission to emigrate to Canada, in the form of receiving permanent residency status.
17. The Landlord further testified his spouse and child have recently obtained IM-1 Visa’s to legally enter Canada. The Landlord submitted copies of valid Visa documentation and copies of Confirmation of Permanent Residency documentation for his spouse and child into evidence.
18. The Landlord further testified his family would be traveling to Canada in September. The travel documentation issued July 7, 2022 supported this testimony specifying his family were current residents of Nepal and intended to take permanent residence in Scarborough, Ontario, Canada.

19. The Tenant testified that the Landlord was not being honest; however, did not submit any specific evidence supporting this claim.
20. I found the Landlord's testimony to be credible and reliable and I accept his testimony and affidavit as evidence that he and his family genuinely intends to use the rental unit for residential occupation for a period in excess of one year.
21. Based on all of the evidence submitted by the parties I am satisfied on a balance of probabilities that the Landlord in good faith requires the rental unit for the purposes of residential occupation for a period of at least one year
22. Given my above determination, it is unnecessary for me to address the other matters related to eviction with respect the L2 Application as it is moot.

Compensation

23. The Landlord testified that compensation was provided to the Tenant in the form of waiving the lawful monthly rent, \$2,150.00, for August 2022.
24. The Landlord submitted an email dated July 16, 2022 addressed to the Tenants, titled 'One Month Rent Compensation Under N12/L2' which confirmed that the Landlord was waiving the rent scheduled to be paid on August 1, 2022.
25. The Landlord further testified no rent was received for August 2022. This is consistent with the documentary evidence and affidavit submitted by the Landlord.
26. The Tenant testified they did not pay rent in August 2022. I am satisfied that the Landlord paid compensation as required by the Act.

Relief from Eviction

27. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Act, including the impact of COVID-19 on the parties and find that it would not be unfair to delay the eviction until February 6, 2023 pursuant to subsection 83(2) of the Act.
28. The Tenant requested that eviction be postponed for two months. The Tenant testified that she has two pets, and it is difficult to find a new unit which allows pets. The Tenant further testified the time would allow her save for a new rent deposit. The Tenant further cited language barriers as a challenge in searching and securing a new unit.
29. The Landlord requested the eviction take place immediately as the Landlord requires the unit for his family as soon as possible and has no other place to stay but for the unit that is being occupied by the Tenant.
30. One consideration I make is related to the N5 and N7 applications where the Landlord alleged the Tenants have substantially interfered with the reasonable enjoyment of the unit and seriously impaired the safety of people in the residential complex by engaging in an altercation; and the Tenants caused undue damage to the premises in an altercation in the

parking lot and by damaging the locks. Through both the testimony of the Landlord and the Tenant, it was undisputed that Mr. Salem was the primary cause of these issues. The Tenant testified that Mr. Salem is no longer living in the unit at present, and the unit is currently occupied by herself and Mr. Grujicic, her new partner. Therefore, I find that any alleged threats with respect to substantial interference, safety or potential causes of further damage are negligible.

31. Given the above determinations, I find that after reviewing the evidence from both parties that it may take the Tenant additional time to search for and secure a new unit and it would not be unfair to the Landlord to delay the eviction until February 6, 2023.

L1 Application - Arrears

32. Given my above determination with respect to the N12 Application, it is unnecessary for me to address the eviction component of the L1 Application and will only consider the arrears component.
33. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
34. As of the date the Application was filed, the Tenants were still in possession of the rental unit.
35. The lawful rent is \$2,150.00. It is due on the 1st day of each month.
36. Based on the Monthly rent, the daily compensation is \$70.68. This amount is calculated as follows: $\$2,150.00 \times 12$, divided by 365 days.

Arrears Amount

37. The Landlord testified the Tenants have not made any payments since the application was filed.
38. Upon cross examination, the Tenant acknowledged not having paid rent since the application was filed.
39. The Landlord submitted a L1/L9 update form specific the rent arrears owing to September 30, 2022 are \$8,700.00 and provided testimony in the form of reading the amounts received through e-transfers supporting the payment amounts and dates substantiating this amount.
40. The Tenant disputed the total amount of arrears.
41. The Tenant testified that the Landlord was exaggerating the total amount of arrears owing stating that during some months her partner Mr. Salem would pay the Landlord in cash.

42. The Tenant's testimony referring to the cash payments were not supported by specific amounts, dates or times that these payments were made. The testimony was limited to generic occurrences where her partner would hand the Landlord quantities of cash. Beyond the Tenant's testimony which referred to the cash payments from her partner to the Landlord, the Tenant did not provide any documentation, such as bank records or receipts, that would substantiate the testimony. The Tenant was unable to provide a total specific quantum of arrears owing.
43. The Landlord, in his testimony denied receiving these payments.
44. This is the Landlord's application and thus it is their burden to establish the amount of arrears on a balance of probabilities. However, it is the Board's usual practice to require that a person who is alleging that a certain payment was made to prove that—otherwise the purported recipient may be in the unenviable position of proving a negative. The Tenant has not established that cash rent payments were made by Mr. Salem to the Landlord. The Tenant failed to summons Mr. Salem as a witness to attend to give this crucial evidence and there is simply insufficient evidence before me to support a finding that the payments were made as the Tenant alleges.
45. After accounting for the waived lawful monthly rent from August 2022, I find the rent arrears owing to September 30, 2022 are \$6,550.00.
46. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
47. The Landlord collected a rent deposit of \$2,000.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$103.00 is owing to the Tenants.

It is ordered that:

1. Pursuant to the L2 Application, the tenancy between the Landlord and the Tenants is terminated as of February 6, 2023. The Tenants must move out on or before March 6, 2016.
2. If the unit is not vacated on or before February 6, 2023, then starting February 7, 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 February 7, 2023.
4. The Tenants shall pay to the Landlord \$2,907.08, which represents the arrears owing to the hearing date, including the application fee, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenants shall also pay the Landlord compensation of \$70.68 per day for the use of the unit starting September 7, 2022 until the date the Tenant moves out of the unit. Any rent payments made since the hearing date shall be deducted from the total amount owing.

6. If the Tenants do not pay the Landlord the full amount owing on or before February 6, 2023, the Tenants will start to owe interest. This will be simple interest calculated from February 7, 2023 at 5.00% annually on the balance outstanding.

January 6, 2023

Date Issued

Greg Witt

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 August 7, 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.