



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

Citation: Mulyar v Andriy, 2022 ONLTB 4677

Date: 2023-01-05

File Number: LTB-L-002870-22

In the matter of: BASEMENT, 15 TUSCANA BLVD
CONCORD ON L4K5J2

Between: Nataliya Mulyar Landlord

And

Buha Andriy Tenant

Nataliya Mulyar (the 'Landlord') applied for an order to terminate the tenancy and evict Buha Andriy (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 August 8, 2022. The Landlord, the Landlord's legal representative, Yasmin van Maurik, and the Tenant attended the hearing. The Tenant had the opportunity to speak with Tenant Duty Counsel on the hearing date.

Determinations:

1. On October 31, 2021 the Landlord gave the Tenant an N12 notice of termination which indicated that the Landlord requires the rental unit for personally occupation. The termination date in the notice is January 21, 2022. This coincides with the last day of a rental period and satisfies the 60 day notice requirement.
2. I am satisfied that the Tenant was compensated an amount equal to one month's rent as required by section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') and that the compensation was paid prior to the termination date in the notice as required by section 55.1 of the Act.
3. The Landlord also filed a declaration with the Board as required by subsection 72(1)(a) of the Act which indicated that the Landlord requires the rental unit in good faith for a minimum of one year.
4. In addition to the declaration, the Landlord testified that they require the rental unit because of its location in proximity to their daughter, who has recently made extraordinary efforts to start her own family and she wants to be part of their family plans. The Landlord's daughter lives in Oro-Medonte which is about an hour from the rental unit. The Landlord went on further to explain that she suffers from a disability that impacts her vision and that

her employment and income has been dramatically effected by her deteriorating eye sight and her lack of ability to use the computer for work. As a result of her visual issues, she eventually was let go from work in 2014 after two years on disability. By 2015 the Landlord was receiving a pension. It was the Landlords evidence that their employer wanted them to get the necessary surgery for her eyes, but the Landlord was not confident in the surgery at that time based on the risks involved, and since she would not go for the surgery, her employer would no longer accommodate her.

5. The Landlord went on to testify that her daughter will be helping to drive her to necessary appointments for surgery and the proximity is closer for her daughter to drive for those appointments. Although the main floor unit had been available for some time, it was rented as of the hearing date. The Landlord testified that she prefers to get the revenue from the main floor unit as it is larger than the basement unit the Tenant is currently occupying. The Landlord decided it was best to move into this rental unit in October when she became hospitalized and had a discussion with her daughter regarding having her help drive her to appointments.
6. The Tenant disputes that the Landlord has a genuine or good faith intention of occupying his rental unit because there is a convenience factor for the N12 notice being served at the same time that the Landlord and Tenant were having a dispute regarding utilities and maintenance issues at the property. It is the Tenants position that the Landlord is using the N12 notice to evict him for asserting his rights in the property and not because she actually wants to live there. The Tenant also raised concerns regarding the Landlords real estate employment given that she has vision issues and that she has no plans to do anything with her own property if she wants to rent the unit the Tenant is in.
7. In support of the Tenants position, a series of emails and texts between the Landlord and Tenant for the period of October 6, 2021 to October 18, 2021 which outline their ongoing dispute regarding the utilities and the Landlords persistence that the Tenant should be paying for them since there are no upper floor Tenants. Also emails regarding the Tenant smoking at the property on October 6, 2021 and the Landlords demand that he not smoke on the property. There was also a dispute regarding entry to the property and the Tenant demanding proper written notice for entry.
8. In response, the Landlord testified that she was greatly bothered by the Tenants smoking and that their relationship was strained, but ultimately she wanted to move into the unit on the basis of her financial circumstances and to be closer to her daughter for accessibility reasons. She fell ill during the same time and had issues regarding her blood pressure which had become unstable. In response to her real estate license, the Landlord indicated that she was considering giving that line of work up.

Analysis

9. 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.

10. 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”.

11. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

12. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, 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.”

13. On a balance of probabilities and based on the evidence before me, I do not find that the Landlord has a genuine intent to occupy the rental unit and I do not find that the N12 notice of termination was served in good faith.
14. Although I do not doubt that the Landlord suffers from a visual impairment or that their blood pressure became unstable which required medical intervention, I find that the Landlord lacked credibility in other areas of her testimony. For example, the Landlord testified that they were unable to work as a result of their visual impairment and because of ongoing and progressively worsening pain, yet she pursued studies in real estate and obtained her real estate license which was not readily disclosed under direct examination.

The Landlord indicated that she was considering giving up her employment because of her vision issues, yet the Landlord also indicated that she is financially struggling. The Landlord neglected to file any supporting documentation with regards to her financial status and otherwise had not made any plans of what to do with her current place of residence which she owns in London. I also draw a negative inference from the Landlords communications with the Tenant less than 2 weeks prior to service of the N12 notice. I find it more likely that the Landlord served the Tenant with the notice as a result of difficulty communicating with the Tenant regarding issues relating to the Tenancy. For these reasons, the Landlord cannot succeed on her application.

15. In accordance with subsection 73.1 (1) of the Act, since I am not granting the Landlords application, I find it appropriate to order the Tenant to return the compensation of \$796.00 by January 31, 2023.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant shall pay to the Landlord \$796.00 for the return of the compensation for the N12 notice on or before January 31, 2023.
3. If the Tenant does not pay the Landlord, then the Tenant will start to owe interest. This will be simple interest calculated starting February 1, 2023 at 5.00% annually on the balance outstanding

January 5, 2023

Date Issued

Terri van Huisstede

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.