



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

Citation: Gourlay-Dahmer v Ritz, 2022 ONLTB 13196

Date: 2022-11-30

File Number: LTB-L-005026-22

In the matter of: UPPER, 53 BROKEN OAK CRES
KITCHENER ON N2N 1N8

Between: Mitchell John Gourlay-Dahmer Landlord

And

Dustin Ritz Tenant

Mitchell John Gourlay-Dahmer (the 'Landlord') applied for an order to terminate the tenancy and evict Dustin Ritz (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 22, 2022 at 10:16 a.m.

The Landlord Mitchell John Gourlay-Dahmer, the Landlord's representative Howard Tavroges licensed paralegal and the Tenant, Dustin Ritz attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation, and that the Tenant must vacate the rental unit by February 28, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 1, 2021 the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by Mitchell John Gourlay-Dahmer.

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Disclosure of previous N12 notice

4. The Landlord sought to amend the Application to include a record of a previous N12 served on November 1, 2022 citing a clerical error.
5. Section 71.1(3) of the Residential Tenancies Act, 2006 (the “Act”), which came into force on September 1, 2021, requires the Landlord to provide certain information about all N12 and N13 notices served in the previous two years with the Landlord’s application. If this is not done, sub-section 71.1(4) of the Act provides the Board must refuse to accept the application.
6. There were two N12 Notices issued; one on November 1, 2021 and the other on November 24, 2021. The Landlord’s representative admitted to not listing the previous N12 on the Application; however, argued this was not prejudicial to the Tenant, as the Tenant knew about the N12, and since this was simply a clerical error made by the property management company when completing the application. He asked for an amendment to the application to include the prior N12 confirming the termination date of March 31, 2022.
7. The Tenant submitted that the Landlord left the prior N12 intentionally and the application ought to be dismissed based on the defect.
8. A similar issue was recently raised in application TNL-36369-21. Vice-Chair Ian Speers there addressed the purpose of Section 71.1(3) of the Act as follows:

...the apparent intention of this statutory amendment is to allow the tenants and the Board to observe a pattern in a landlord’s conduct of using N12 and N13 notices, I believe that the disclosure of all N12 and N13 notices, valid or not, is the legislative intent of the provision. This legislative intent is underscored by the contemporaneous proclamation of subsection 72(3) of the Act, which expressly contemplates that “the Board may consider any evidence the Board considers relevant that relates to the landlord’s or purchaser’s previous use of notices of termination under section 48, 49 or 50.”
9. 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.
10. As did Vice-Chair Speers in TNL-36369-21, I accept that, in certain circumstances, where there is non-compliance with subsection 71.1(3) the application may be dismissed. However, in the circumstances of this application the Landlord completed disclosure prior to service of the Tenant, and the Tenant was aware of both N12s.
11. I find the Tenant was not prejudiced by the error in the application. The Tenant was able to investigate patterns in the Landlord’s use of N12 and N13 notices; nor was the Tenant

prejudiced in their ability to argue that any pattern undermined the good faith of the Landlord's service of the within N12 Notice.

12. As a result, I find the Landlord has complied with their obligations under section 71.1 and consent to the requested amendment.

Compensation

13. The Tenant submitted the Landlord's Application be dismissed because compensation was not paid according to section 48 of the *Residential Tenancies Act, 2006*, (the 'Act').

14. Section 48.1 of the Residential Tenancies Act, 2006 (the Act) states:

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48

15. On November 1, 2021, the Landlord served a N12 on the Tenant with a Termination Date of March 31, 2022 and on December 23, 2021, the Landlords compensated the Tenant as required by section 48.1 of the Act by giving him an amount equal to one month's rent-- \$1,200.00.
16. Submitted into evidence was a photocopy of the cheque for \$1,200.00 made out to the Tenant dated December 20, 2021. The Landlord testified the cheque was given to the Tenant on December 23, 2021 and cashed on January 4, 2022.
17. As such, I find that the Landlord has paid to the Tenant compensation in the amount of one month's rent in accordance with section 48 of the *Act*.
18. The Tenant submitted a copy of a N1 Notice of Rent Increase dated September 17, 2021 that gave notice the rent would increase to \$1,214.00 as of January 1, 2022. The Tenant submitted that since only \$1,200.00 was provided in compensation, and not \$1,214.00, the Landlord did not meet his obligations under section 48 to give an amount equal to one month's rent.
19. The Landlord testified, despite the notice, the lawful monthly rent never increased and was kept at its current level of \$1,200.00 per month. Further, the Tenant has not paid rent since this date.
20. I find that therefore that the Landlord has complied with their obligations under the Act by compensating the Tenant \$1,200.00 with a cheque dated December 20, 2021, an amount equal to one month's rent by the termination date March 31, 2022.

Good faith intention to reside in the rental unit for one year

28. I find the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

29. The Landlord testified he has moved to Ontario from British Columbia and explained he works remotely in sales for an overhead crane company, his wife has recently given birth to a child, and intends to live in the unit for a period of at least one year as it is suitable to raise his family and is close to grandparents who live nearby.
30. The Tenant testified that the Landlord has a well-established life in British Columbia and provided records illustrating the Landlord and his wife both own a property and have conducted work in British Columbia. The Tenant argued that he believes the Landlord and his family have too much to lose in moving back to Ontario.
31. In reviewing the evidence and considering the testimony of both parties, I find no reason to believe the Landlord's declaration or testimony should not be accepted. Their young family, the Landlord's ability to work remotely and their proximity to grandparents who can act as caregivers to their young child are reasonable arguments supporting their rationale to move into the unit for at least one year.

Bad Faith – alleged re-renting or selling

32. The Tenant alleged that the Landlord's intent was not to move into the unit, but to re-rent or sell the unit at an increased amount.
33. As evidence, the Tenant testified that he observed the Landlord's realtor at the property and submitted a screenshot from a video showing the Landlord and his realtor on December 23, 2021, in the entryway to the unit.
34. On cross-examination, the Tenant acknowledged proper notice of entry was served and that the purpose of the entry listed on the notice was 'inspection.'
35. The Landlord testified that property had not been listed for sale, nor does he intend to list the property for sale and the realtor is a friend. The Landlord denied the allegations of bad faith and maintained the purpose of submitting the N12 was the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.
36. At best, this evidence is circumstantial and does not rise to the level where it would demonstrate the Landlord has intent to re-rent or sell the unit to another party. Therefore, this part of the argument is dismissed.

Bad Faith – responding to maintenance requests

37. The Tenant also alleged that the Landlord issued the N12 in bad faith as they were served on response to the Tenant raising maintenance issues. The Tenant pointed to the dates of his maintenance requests being close in proximity to the date of the N12 and asserted that the N12 was simply an exercise in retaliation to his complaints.
38. The Landlord denied these allegations and maintained the purpose of submitting the N12 was the Landlord in good faith requires possession of the rental unit for the purpose of

residential occupation for at least one year. The Landlord's representative pointed to the Landlord's declaration to support this claim.

39. Based on the evidence before me, I find the fact the dates of the maintenance requests were near the date the N12 was served is coincidental, and there was no evidence submitted to substantiate there was a causal relationship. This argument is dismissed.

Relief from eviction

40. The Tenant alleged that there have been ongoing maintenance problems with the unit and invited me to consider these actions to justify mandatory refusal of eviction under subsection 83(3)(a) of the Act, when "the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement."
41. The events alleged by the Tenant include lawn care, parking, water damage to the ceiling, the toilet mechanism being broken, a bathroom window not opening properly and high temperatures and potential mold in the attic. Some matters, such as the toilet mechanism, appear to have been resolved.
42. The Tenant also provided correspondence between himself and a property standards officer at the City of Kitchener dated August 17, 2022 that indicated a notice of non-compliance went out March 17, 2021. However, as of August 17, 2022 the City indicated that proof of measures and drawings were underway. The evidence before me suggests that the Landlord was working towards voluntary compliance with the City. The Tenant did not provide evidence demonstrating that the work was still outstanding and there was no evidence of an outstanding order from property standards presented at the hearing.
43. Subsection 83(3)(a) of the Act speaks in the present tense, thus I cannot consider past breaches that have been remedied. But even were all of these issues were ongoing, I am not satisfied based on the Tenant's evidence or description of them that the matters, alone or in the aggregate, constitute a serious breach of any responsibilities of the Landlord under the Act.
44. The Tenant expressed the hardship in finding a new unit and requested additional time to complete a housing search, up to 90 days. The Tenant presented as part of their evidence a considerable amount of housing and rental market data illustrating rising costs of rent in the geographical region. I accept that finding a new rental unit will be challenging for the Tenant.
45. 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.

Daily compensation, NSF charges and the rent deposit

46. The Tenant was required to pay the Landlord \$5,667.90 in daily compensation for use and occupation of the rental unit for the period from March 31, 2022 to August 22, 2022.

47. Based on the Monthly rent, the daily compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
48. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
49. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$64.00 is owing to the Tenant for the period from January 1, 2020 to August 22, 2022.
50. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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.
4. The Tenant shall pay to the Landlord \$4,403.90, which represents compensation for the use of the unit from March 31, 2022 to August 22, 2022, less the rent deposit and interest the Landlord owes on the rent deposit. Any rent payment made by the Tenant since March 31, 2022 must be applied to this amount.
5. The Tenant shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting August 23, 2022 until the date the Tenant moves out of the unit. Any rent payment made by the Tenant since August 22, 2022 must be applied to this amount.
6. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 4.00% annually on the balance outstanding.

November 30, 2022

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 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.