



Order under Section 69 Residential Tenancies Act, 2006

Citation: DUMA v ROWE, 2025 ONLTB 14635

Date: 2025-02-24

File Number: LTB-L-049442-24

In the matter of: UPPER, 254 WESTWOOD DRIVE
KITCHENER ON N2M2L2

Between: MAGDALENA DUMA
ADRIAN DUMA

And

THOMAS ZACHARY ROWE
MARIANE SILVA MENDES

I hereby certify this is a
true copy of an Order dated

FEB 24, 2025

Landlord and Tenant Board

Landlord

Tenant

MAGDALENA DUMA and ADRIAN DUMA (the 'Landlord') applied for an order to terminate the tenancy and evict THOMAS ZACHARY ROWE and MARIANE SILVA MENDES (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 November 7, 2024.

The Landlord's Legal Representative, Tim Kelly, the Landlord, the Tenant's Legal Representative, Matthew Pankhurst, and the Tenant attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

At the outset of the hearing the correct spelling of the name of the Tenant, Mariane Silva Mendes, was confirmed and the application was amended to correct this spelling. The application was also amended to reflect that the previous N12 notice of termination listed as being for 259 Westwood Drive in the application was in fact also for 254 Westwood Drive. No objection was made to either amendment.

It is determined that:

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,

the tenancy between the Landlord and the Tenant is terminated on March 31, 2025. The Tenant must move on or before March 31, 2025. The Landlord or the Tenant shall also pay to the other any sum of money that is owed as a result of this order as further specified below.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 31, 2024, the Landlord gave the Tenant an N12 notice of termination (the "N12 Notice"), deemed served the same date, with the termination date of May 31, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and their spouse. The Landlord, Magdalena Duma, and the Landlord, Adrian Duma, are spouses.
4. I find that 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 for the reasons below.
5. The Tenant disputes that the N12 Notice was served in good faith because:
 - a. The Landlord attempted to raise the rent in an amount in excess to that permitted by the guidelines and the Tenant refused to agree to that increase;
 - b. The Tenant asserts that the rental unit is only an investment property for the Landlord and that the Landlord does not intend to move into the rental unit; and
 - c. The Tenant asserts that the Landlord is attempting to evict them so they can renovate the unit and therefore an N13 notice of termination should have been served;
6. The Tenant, Thomas Rowe ("Mr. Rowe") testified that on July 4, 2022, the Landlord proposed an above guideline rent increase. The Landlord further e-mailed the Tenant on December 15, 2022 that when the lease renewed the rent would increase to \$2,050.00, which would be an above guideline increase, if the Tenant wished to stay. The Tenant believes that the relationship with the Landlord was fairly good prior to these refusals, but that the refusal to pay these increases is what caused the Landlord to serve the N12 Notice.
7. The Landlord served their first N12 notice of termination on the Tenant, on January 21, 2023, a little less than a month after sending the above referenced e-mail. There have been two previous N12 notices of termination served on the Tenant, which did not result in orders of eviction, the last having been dismissed for procedural issues after an application before the LTB.
8. Mr. Rowe testified that the Landlord rented out the rental unit and the basement separately, but that the doing so did not conform with the zoning and by-laws for the City of Kitchener. The Tenant had been asked not to allow by-law inspectors into the home, and the Landlord had previously altered the property to remove a separation between the rental unit and the basement unit on a temporary basis in order to convince an inspector that the residential complex was a single family dwelling. The Tenant believes that the N12 Notice was served in part so the Landlord could conduct renovations to the residential complex to make it compliant with zoning and by-laws. The Tenant notes that a building

permit to turn the residential complex into a duplex was issued in 2023 and they believe that an N13 notice of termination would have been the more appropriate notice to serve.

9. Based on the above, the Tenant does not believe that the Landlord legitimately intends to move into the rental unit. The Tenant notes that the Landlord owns several properties in the region, and that they have other options as to where to live.
10. The courts have provided much guidance to the Board in interpreting the “good faith” and “genuine intent” requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
11. 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”

12. 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.”

13. 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.”

14. The Landlord, Magdalena Duma, testified that she and the Landlord, Adrian Duma, own the 3 bedroom house they live in which currently houses 11 people – themselves, 3 children, Ms. Duma’s mother and father, and her brother, sister-in-law and their 2 children.

The reason the Landlord wishes to move into the rental unit is because there is insufficient space for the 11 people living in their home currently..

15. Ms. Duma testified that the timing of the N12 Notice was caused by this overcrowding. Ms. Duma's mother and father moved into their home in 2022 after her father had a stroke. Her brother, sister-in-law and their 2 children moved in with them as well at beginning of 2023 as it was difficult for Ms. Duma to care for her parents on her own and she required help in doing so.
16. The intention of the Landlord is move into the entirety of the residential complex and occupy it as a family with their 3 children, while the rest of Ms. Duma's family stays in their current home.
17. Ms. Duma testified that the building permits were acquired for the purposes of turning the garage into a separate dwelling unit, as the Landlord was looking to find any space to move into while this process was underway. The screenshot of the building permit search from the City of Kitchener website provided by the Tenant shows the description of the permit as "Permit is for converting the garage into living space to convert to a duplex."
18. Ms. Duma testified that they briefly attempted to move into the basement of the residential complex when the tenant of the basement moved out. Mr. Duma moved in for two nights in order to begin to renovate the basement space and the garage into a dwelling space for the Landlord and their children until they were able to move into the entirety of the home. Mr. Rowe testified that he was never aware that the Landlord ever tried to move in. Both parties acknowledge there was conflict between the Landlord and Tenant around this time, and the Landlord testified that this caused this arrangement to be unfeasible. The Landlord decided that the conflict with the Tenant made them feel unsafe and caused too much stress for living on the same property with the Tenant to be a workable arrangement.
19. I find that the Landlord did serve the N12 Notice in good faith and intends to occupy the rental unit for a period of one year. While the Landlord wishing to raise the rent above the guidelines shortly before serving the first N12 notice of termination understandably raised suspicions on the Tenant's part, I find those suspicions have been overcome by the direct evidence of the Landlord as to their reasons for wanting to occupy the property.
20. I further find that the primary purpose of moving into the rental unit is not to renovate it. The building permit appears to be for the garage, and I accept the Landlord's evidence as to why they sought one. While the Landlord acknowledges that they do intend to do renovations to the basement, Ms. Duma testified that this is for use of their own family, primarily as a playroom for their children. The facts before me do not ground the argument that the Landlord would have been required to file an N13 notice of termination instead of the N12 Notice.
21. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2024. The Tenant acknowledged receiving this compensation.
22. Based on the Monthly rent, the daily compensation is \$61.32. This amount is calculated as follows: \$1,865.00 x 12, divided by 365 days. As of the hearing, the rent was paid in full to November 30, 2024.

23. The Landlord collected a rent deposit of \$1,800.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$27.25 is owing to the Tenant for the period from April 1, 2024 to November 7, 2024.
24. The Landlord seeks termination of the tenancy as soon as possible, given the living situation of the Landlord.
25. The Tenant asked for the tenancy to be extended several months to February 1, 2025 in the event I found this application was in good faith. Given that this order is being issued after that date, I recognize this as a request for several months to find alternative accommodations.
26. 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 March 31, 2025 pursuant to subsection 83(1)(b) of the Act.
27. The Landlord has compelling reasons for wanting to occupy the rental unit in fairly short order given that they are living with 11 people in a 3 bedroom house. However, this is a no-fault ground of eviction and the Tenant had suspicions regarding the genuine intent of the Landlord to occupy the rental unit that were reasonable in the circumstances. I find that an extension to the end of the next rental month following this order to allow the Tenant sufficient time to find alternative accomodaitons is appropriate in the circumstances.

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 March 31, 2025.
2. If the unit is not vacated on or before March 31, 2025, then starting April 1, 2025, 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 April 1, 2025.
4. The Tenant shall pay the Landlord compensation of \$61.32 per day for the use of the unit starting December 1, 2024 until the date the Tenant moves out of the unit. The Landlord owes \$1,827.25, which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant. Any payments made by the Tenant for rental periods commencing December 1, 2024 or after shall also be deducted from the amount owing.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

February 24, 2025
Date Issued

Benjamin Seigel
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 October 1, 2025 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.