



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-02026-21

In the matter of: 2113 PEAR TREE ROAD
MISSISSAUGA ON L5A2S5

Between: Bruno Malfara Landlord

and

Jenna Boyd Tenant

Bruno Malfara (the 'Landlord') applied for an order to terminate the tenancy and evict Jenna Boyd (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard by video/teleconference on January 6, 2022.

Bruno Malfara (BM), the Landlords' legal representative George Brown, the Tenant and her legal representative, Vivian Ruzsvanszky, attended the hearing.

Determinations:

1. On May 20, 2016, the Tenant entered into a lease agreement. The Landlord named in the lease is a corporation, "MM2014". The Tenant has been paying rent to MM2014 throughout the tenancy.
2. BM is the sole shareholder of MM2014.
3. On or about May 31, 2021, MM2014 served the Tenant a Notice of Termination, Form N12, with the termination date of July 19, 2021 because BM's parents wished to move into the rental unit.
4. Until July 19, 2021, MM2014 had a 100% ownership interest in the rental unit. After BM realized that a corporation could not serve an N12 Notice of Termination, he transferred part ownership of the property to himself for \$1.00. On July 31, 2021, the Tenant was then served with a new Notice of Termination that named the Landlords as MM2014 and BM.
5. However, this second Notice of Termination was defective because it did not correctly set out the termination date as required by subsection 48(2) of the Act.

6. Therefore, on or about August 9, 2021, the Tenant was served with a third Notice of Termination, which is the subject of this application.
7. The third N12 Notice of Termination identifies the Landlords as MM 2014 and BM.

Law and analysis:

8. The N12 Notice of Termination was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act') which states, in part:

48 (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;
- (b) the landlord's spouse;
- (c) a child or parent of the landlord or the landlord's spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

(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

9. Subsection 48 (5) of the Act states:

(5) This section does not authorize a landlord to give a notice of termination of a tenancy with respect to a rental unit unless,

- (a) the rental unit is owned in whole or in part by an individual; and
- (b) the landlord is an individual [emphasis added]

10. Therefore, pursuant to subsection 48(5)(b), only a landlord who is an individual is authorized to serve a tenant with an N12 Notice of Termination on the ground that the landlord in good faith requires possession of the rental unit for the purpose of residential occupation.
11. In this instance, I find that the only genuine Landlord is MM2014, a corporation. I recognize that the definition of "landlord" in section 2(1) of the Act includes an owner of a rental unit and I also recognize that there may be more than one landlord for a single rental unit given the broad definition of this term. However, BM acquired his partial ownership interest in the rental unit from a corporation that he alone controls for the token amount of \$1.00 for the sole purpose of being able to evict the Tenant pursuant to section 48 of the Act.
12. Section 202 of the Act states:

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit

13. In this instance, the real substance of the transfer of part ownership of the property to BM was for the sole purpose of evicting the Tenant. The true Landlord was and continues to be a corporation, MM2014, not BM. Since MM2014 is not an individual, it cannot give the Tenant a Notice of Termination for owner's own use. This interpretation is consistent with the intent of subsection 48(5) which is to deny corporate landlords to evict tenants for Landlord's own use.

14. As I have found that MM2014, a corporation, is the only genuine Landlord, the N12 Notice of Termination served on August 9, 2021 does not comply with section 48 of the Act.

It is ordered that:

1. The Landlord's application is dismissed.



January 14, 2022
Date Issued

Jana Rozehnal
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.