



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

Citation: Barry v Vindis, 2024 ONLTB 72896

Date: 2024-10-03

File Number: LTB-L-101048-23

In the matter of: 8138 Regional Rd. 20
Smithville ON L0R2A0

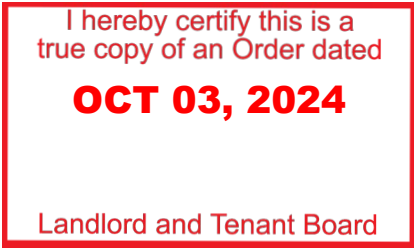
Between: Stephen Barry
Krystal Vindis

Landlord

And

John Vindis
Katherine Vindis

Tenant



Stephen Barry and Krystal Vindis (the 'Landlord') applied for an order to terminate the tenancy and evict John Vindis and Katherine Vindis (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 July 16, 2024.

The Landlord parties, the Landlord's Legal Representative J. Brad Chudyk, the Tenant parties and the Tenant's Legal Representative Robert Barber attended the hearing.

It is determined that:

1. As explained below, the Landlord did not compensate the Tenant as required by section 48.1 of the *Residential Tenancies Act, 2006* ("the Act"). Therefore, the Landlord's application is dismissed.
2. On December 20, 2023, the Landlord gave the Tenant an N12 notice of termination, deemed served on December 25, 2024, with the termination date of February 29, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
3. At the hearing, as a preliminary question, I asked the parties whether the Landlord had compensated the Tenant in accordance with section 48.1 of the Act, which provides that "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."

4. Section 55.1 of the Act requires that the Landlord compensate the Tenant no later than on the termination date specified in the notice of termination.
5. The Landlord's Legal Representative submitted that the Landlord's compensation paid in respect of a prior N12 notice of termination that was the subject of a previous L2 application, file number LTB-L-057342-22, carried forward to the present N12 notice. The Landlord's Legal Representative submitted that because the prior application was dismissed, the compensation associated with the previous N12 is presumed to carry forward. The Landlord's Legal Representative did not refer to any authorities supporting this position.
6. The Tenant's Legal Representative submitted that the Landlord's application should be dismissed for the failure to provide compensation under section 48.1 of the Act. The Tenant's Legal Representative submitted that, while it is possible for compensation paid in support of one N12 notice to carry forward to another, the Landlord's intention to rely on the previous compensation must be clear and unequivocal. The Tenant's Legal Representative referred to the Board's decision in *SOL-20896-21*, 2021 CanLII 139416 (ON LTB) in support of this position.
7. The Tenant's Legal Representative also submitted into evidence a document that had been filed with the Landlord's application LTB-L-087011-23. The document, dated October 30, 2023 and signed by the Landlord, demands that the Tenant "immediately" repay \$1,350.00 to the Landlord to "address the compensation received in relation to the [prior] N12".
8. The Landlord has the onus of establishing all the facts necessary for the Board to make an order pursuant to section 69 of the Act. This includes establishing that the Landlord has compensated the Tenant as required by section 48.1 of the Act. Based on the submissions of the parties, however, I am not satisfied that the Landlord has met their obligation to compensate the Tenant.
9. First, the Landlord has not provided any evidence to indicate that the Tenant was advised of the Landlord's position that the compensation provided in connection with the prior N12 satisfied the requirement of section 48.1 of the Act.
10. Second, the Landlord's application LTB-L-087011-23 contains a document filed by the Landlord that demonstrates the Landlord explicitly demanded the return of the compensation paid in support of the prior N12 notice. The document supports the Tenant's position that the Landlord did not, in fact, waive the Landlord's potential entitlement to the return of compensation in order to "carry forward" the compensation to the new N12.
11. Third, I am persuaded by the decision of Vice-Chair Shea in *SOL-20896-21*, 2021 CanLII 139416 (ON LTB), which stands for the proposition that "In order to rely on the compensation provided to the Tenant in connection with the aborted N12 for the purposes of the second N12, the Landlords were required to clearly and unequivocally advise the Tenant prior to [the termination date] that the obligation to return the compensation was being waived." I find that the facts of the matter before me are substantially similar to those in *SOL-20896-21* and I see no basis to deviate or distinguish from the Board's prior order.
12. As the Landlord has failed to prove that the Landlord clearly and unequivocally advised the Tenant prior to February 29, 2024 that the Landlord was waiving their potential claim to the

compensation paid in support of the previous N12, I find that the Landlord has not compensated the Tenant as required by sections 48.1 and 55.1 of the Act.

13. In summary, the Landlord has not compensated the Tenant an amount equal to one month's rent and the termination date has passed. As a result, the Landlord's application must be dismissed.

It is ordered that:

1. The application is dismissed.

October 3, 2024

Date Issued



Tiffany Ticky
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.