



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

Citation: Kaye v Ritosa, 2023 ONLTB 74727

Date: 2023-11-14

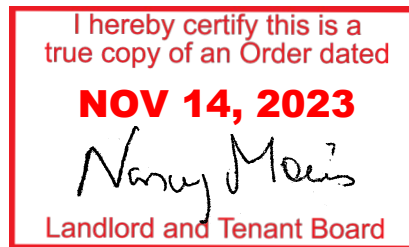
File Number: LTB-L-019744-23

In the matter of: S721, 112 GEORGE ST
TORONTO ON M5A2M5

Between: Barbara Kaye

And

Eric Ritosa
Otto Ritosa



Landlord

Tenants

Barbara Kaye (the 'Landlord') applied for an order to terminate the tenancy and evict Eric Ritosa and Otto Ritosa (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on September 7, 2023.

The Landlord, the Landlord's legal representative, E. Page, the Tenant, E. Ritosa, and the Tenants' legal representative, S. McGrory, attended the hearing.

Determinations:

1. The Landlord served the Tenants with an N12 notice of termination to evict the Tenants alleging that she intends, in good faith, to move into the rental unit for her own residential use for at least one year.
2. The Tenant, E. Ritosa (ER) raised a preliminary objection to the N12 notice of termination. The termination date on the notice of termination was April 30, 2023. However, the Tenants submit that this is an invalid termination date contravening subsection 48(2) of the *Residential Tenancies Act, 2006* (the 'Act'). ER Tenant alleges that the parties had an implied one year lease, renewed each year for another full, one year term, commencing on November 1 each year, since the beginning of the tenancy in 2014. He submits that the lease was once again renewed for a fixed one year term commencing November 1, 2022, and ending October 31, 2023. Thus, ER alleges that April 30, 2023 is not a "day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term."

3. I need not make a finding on the Tenants' preliminary issue, because, for the reasons that follow, I find that the Landlord has failed to prove, on a balance of probabilities, that she in good faith, intends to move into the rental unit for her own residential use for a period of at least one year.
4. The Landlord is a realtor, and she currently lives in Virgil, in the Niagara region. She said that she has been suffering great financial hardship because of the increasing interest rates, and the rate of her line of credit. She said that she currently spends \$4,992.00 per month to carry the rental unit, including line of credit, property tax and other fees. She said that the monthly rent for the unit is \$3,022.00, which is substantially less than her carrying costs, and she is "drowning".
5. The Landlord says that she is now 65 years old, and she wants to retire.
6. The Landlord said that she sent an N11 agreement to terminate the tenancy to the Tenants in February 2023, but they did not agree to sign. She submitted into evidence an email to the Tenants, dated February 25, 2023, in which she expresses concern about the fact that the Tenants have not signed and returned the N11. She reiterates the financial difficulties she is facing, mentioned above, and she states that she intends to sell the rental unit. The Landlord further states that she will serve the Tenants with an N12 notice of termination if they do not sign the N11, and she writes "What document do you prefer to sign: N11 with November 30 deadline or N12 with 60 day notice from me? I assure you that I will move into the condo myself in order to save me money on my expenses....."
7. The Landlord also said that she suffers from depression, and the conflict with the Tenants has caused her further distress. She said that if she moves to the rental unit in Toronto she will be closer to her children and her sister. The Landlord also said that Toronto is closer for her to get to her work as a real estate agent.
8. The Landlord said that she does not intend to sell the rental unit right now because it is not a good market. She said that she would "consider" selling her townhouse in Virgil, but she is not sure if she will sell it or rent it out. She said that she has owned the townhouse in Virgil since 2009. She said that she moved to Virgil with her husband because they like the area, it was healthier and better for walking. She said that she has community and a support system in Virgil.
9. The Landlord did not provide consistent testimony about whether she intends to sell her townhouse in Virgil, whether she will rent it out, or whether she will just keep it empty. In lieu of a clear answer to her intentions with respect to her Virgil property, she repeated that her "plan is to move into my condo (in Toronto) and regulate (her) financial situation".
10. ER said that he has lived in the rental unit for almost ten years, it is comfortable, and it is better for him to remain in the unit as he just started a new chartered accountancy business.
11. ER said that he pays all the expenses of the rental unit for himself and his brother, and he has not been able to find a comparable 2 bedroom unit with a den for a comparable price.
12. ER said that he believes that the Landlord owns other properties, but he did not have documentary evidence to support his belief.

Reasons and Analysis:

13. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), a case in which the Landlord filed the application on the basis that he required possession of the rental unit for purpose of residential occupation by his adult son and the son's family, the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...

14. The case law in this area establishes that the test is determined by considering the intention of the person named in the application. If that person genuinely intends to reside in the unit, then the notice is given in good faith.
15. However, in the appeal to the Divisional Court, *Fava v. Harrison*, 2014 ONSC 3352 ('*Fava*'), paragraph 17 states that "We accept, as reflected in *Salter, supra*, (*Salter v. Beljinac* (2001), 201 D.L.R. (4th) 744 (Ont.Div. Ct.)), 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 motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."
16. In considering the conduct and motives of the landlord in this matter, I find that the Landlord has not proved, on a balance of probabilities, that she desires, in good faith, to occupy the property for the reasons that follow.
17. The Landlord stated, a number of times, that she is unable to continue paying the carrying costs of the rental unit at a loss. This was her stated primary motivation. However, when asked how the act of moving into the rental unit will reduce her financial hardship while she still owns the townhouse in Virgil, and while she cannot clearly say if she will sell or rent that property out, she failed to provide clear reasons. She said she would "consider" selling her townhouse in Virgil, but then she would not commit to her intention to sell, or at another point she said that she cannot sell it.
18. I found the Landlord's testimony was frequently disingenuous. She said, and it was undisputed, that she is a realtor of over 22 years, with a knowledge of lease agreements. Yet, there was a record of email correspondence that demonstrates that the Landlord never provided the Tenant with a proper, lawful, notice of rent increase in the 9 years he has been living there. The increases appear to have been at guideline amount, but they were nevertheless, provided with insufficient notice, frequently much fewer than 90 days in advance, and never on an official NORI form. The Landlord did not have a comprehensible explanation for this, despite her stated knowledge of lease agreements and, consequently, her knowledge of her obligations under the *Residential Tenancies Act, 2006* (the 'Act').

19. I also say that her evidence was frequently disingenuous, because, in addition to her surprising unlawful approach to rent increases, the Landlord was also knowledgeable enough to know that it would be a lot easier for her to sell the rental unit if the Tenant signed an N11 agreement to terminate, rather than having to go through the process of serving an N12 notice of termination. The email she submitted, dated February 25, 2023, was, in essence, a threat to the Tenant that if he refused to sign an N11, she would serve an N12 notice of termination. She was knowledgeable enough to include the statement, I assure you that I will move into the condo myself in order to save me money on my expenses.....” as proof, presumably, that in serving the N12 notice of termination she genuinely intends to move in. However, serving an N12 notice of termination because a tenant refuses to sign an N11 is one of the circumstances where refusal of eviction is required, as provided in subsection 83(3)c). Section 83(3)c) of the Act provides that eviction should be refused if it is being carried out in retaliation for a Tenant enforcing their legal rights. In this case, the Tenant would be enforcing his legal right to refuse to sign an N11. Threatening to evict someone because they fail to sign an N11 agreement to terminate is, I find, also a circumstance for refusal of eviction, pursuant to subsection 83(3)(a), i.e. serving an N12 merely to rid oneself of a tenant in order to sell the rental unit is a serious breach of the landlord’s responsibilities under the Act.
20. The Landlord ultimately failed to explain how moving into the rental unit would solve her financial problems. She also failed to provide credible reasons for moving out of her home of many years in Virgil with a genuine intention to move to a condo in Toronto that she has never lived in, and for which she has never expressed any interest to live in. The Landlord testified far more vehemently, and at length, about her financial difficulties rather than her family connections and support network in Toronto. On the contrary, she testified about her support network and community in Virgil where she currently lives. There is, on the other hand, documentary evidence of the Landlord’s desire and intention to sell the rental unit rather than move into it. Selling a unit is not a valid purpose, under the Act, for serving an N12 notice of termination.
21. Therefore, upon examination of the motives and conduct of the Landlord, I draw the inference, that the Landlord does not, on a balance of probabilities, genuinely intend to move into the rental unit. Her application will be dismissed.

It is ordered that:

1. The Landlord’s application is dismissed.

November 14, 2023
Date Issued


 Nancy Morris
 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.