



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

Citation: Ambrana Enterprises Inc. v Cabarel, 2023 ONLTB 38991

Date: 2023-06-01

File Number: LTB-L-033967-22

In the matter of: 1027 Elgin St N
Cambridge ON N1R8J4

Between: Ambrana Enterprises Inc./Steve Senwasane Landlord

And

Cindy Duarte
Felicia Cabarel
Nino Duarte

Tenant

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

JUNE 1, 2023

Landlord and Tenant Board

Ambrana Enterprises Inc./ Steve Senwasane (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Duarte, Felicia Cabarel and Nino Duarte (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 May 10, 2023.

The Landlord and the Landlord's Legal Representative Frank Alfano and Jane Sean and the 2nd named Tenant and the Tenant's Legal Representative Mitchell Kent attended the hearing.

Determinations:

- As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
- The Tenant was in possession of the rental unit on the date the application was filed.
- N12 Notice of Termination**

Purchaser's Own Use

On June 8, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on June 9, 2022 with the termination date of August 31, 2022. The notice was

given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by Brandon Senwasane.

4. It is discovered during the hearing that Steve Senwasane also is a buyer during the transaction of Purchase and Sale.

Good Faith

5. N12 was served pursuant to section 49 of the Residential Tenancies Act, 2006 (Act). Section 49(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 notice, the purchaser required, in good faith, the unit for residential use.
6. In *Feeney v. Noble*, [1994 CanLII 10538](#) (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* [2001 CanLII 40231](#) (ON SCDC), where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
7. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property.

Landlord's Evidence

8. The Landlord's first witness was Steve Sanwasane. He testified his corporation purchased the rental unit sometime in 2016, under the corporation's name of Ambrana Enterprises Inc. He testified that the rental unit was bought as an investment for his children.
9. Mr. Sanwasane testified his company Ambrana Enterprise, entered into an agreement of purchase and sale with himself and his son Brandon Senwasane on or about May 6, 2022. The sale of the property was for the address of 1027 Elgin St. N in Cambridge, Ontario, N1R 8J1. The completion date was for June 23, 2022, for the purchaser Mr. Steven and Brandon Senwasane and they were to obtain vacant possession of the rental unit.
10. Mr. Steven Sanwasane testified his company sold the property for \$520,000, which he stated as market value.
11. Mr. Kent cross examined Mr. Steve Senwasane on the evidence presented.

12. When questioned if Mr. Senwasane initialed pages 1 through 9 of the Purchase and Sale Agreement, Mr. Senwasane agreed he did as the seller and his son Brandon as the buyer.
13. Mr. Senwasane was unable to articulate how much the property sold for, as the Agreement of Purchase and Sale submitted to the Board stated \$2.00 not \$520,000.
14. Mr. Kent then questioned on the Agreement of Purchase and Sale, if Mr. Steve Senwasane is the buyer or seller, he confirmed he was the seller. Mr. Senwasane testified he does not know why he did not sign or initial the buyer's part.

Analysis

15. When I examine the evidence presented, I am not satisfied that the Landlord has met the burden in proving their application. I was provided no evidence from the Landlord, such as a Title search to show that the corporation Ambrana Enterprises did not own the property at the time of purchase and sale.
16. As I examine the Agreement of Purchase and Sale, it is clear that Ambrana Enterprises is listed as the seller of the property and not an individual. Section 48(5) of the 'Act' states

"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."
17. Further, the Agreement of Purchase and Sale, Mr. Steve Senwasane has failed to sign in the appropriate sections of the agreement, as a buyer. Upon further examination Mr. Steve Senwasane does not initial in the appropriate areas as the buyer only the seller. He admitted this in his testimony under cross examination and redirect.
18. The Landlord failed to present any evidence that all signatures and initials are demonstrated to satisfy a proper Agreement of Purchase and Sale.
19. I find it difficult to believe that a property would sell for \$2.00 in the current market. The Landlord provided no other evidence to support what amount the property sold for, other than what was stated on the Purchase and Sale Agreement. The Landlord could had presented mortgage paperwork to show how much was mortgage on the property or could had called his counsel as a witness to show a break down of the monies that changed hands during this transaction.
20. I find that Mr. Steve Senwasane is not at arm length to this transaction, he is very much involved in one or more capacities, this is evident during his testimony both in examination in-chief and cross examination. In fact, he has attempted to be a buyer and seller, with a vast interest to the Landlords claim.
21. For the reason given above, the Landlord application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

June 1, 2023
Date Issued



Anthony Bruno
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.