



Order under Section 69 Residential Tenancies Act, 2006

Citation: Agnew v Bourgette, 2025 ONLTB 30736

Date: 2025-04-23

File Number: LTB-L-086276-24

In the matter of: 300, 388 RONCESVALLES AVE
TORONTO ON M6R2M9

Between: Breen Agnew
Dr. Carissa Dupuis

And

Tim Bourgette
Midori Miyamoto

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

APR. 23, 2025

Landlord and Tenant Board

Landlords

Tenants

Breen Agnew and Dr. Carissa Dupuis (the 'Landlords') applied for an order to terminate the tenancy and evict Tim Bourgette and Midori Miyamoto (the 'Tenants') because the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on April 15, 2025.

The Landlords, the Landlords' representative, Denise Ranger, the Tenants' representative, George Brown, and the Tenants attended the hearing.

Determinations:

1. For the reasons set out below, the Landlords' application is dismissed.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Landlords application is based on an N12 notice of termination ("N12 notice") served on the Tenants on October 30, 2024, with the termination date of January 31, 2025. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords for a period of at least one year.
4. As a preliminary issue, the Tenants' representative raised a concern with respect to the named Landlords on the N12 notice and the application. Both the N12 notice and the application list Dr. Carissa Dupuis and Breen Agnew as the Landlords, however, the Tenants' representative submitted that the rental unit is also owned by a corporation by the name of Dupuis Agnew Holdings Limited, and that this Landlords was not included in either the N12 notice of application as a way to mislead the Board.

5. It was uncontested that Landlords advised the Tenants, when they purchased the property, that tenancy between the parties was between Dupuis Agnew Holdings Limited ("the Corporation") and the Tenants. It was also uncontested that the Tenants have consistently paid rent to Dupuis Agnew Holdings Limited throughout their tenancy.
6. The Landlords agreed that they now have a 1% ownership of the rental unit and that 99% of the rental unit is owned by their corporation, , and as noted above this transfer of ownership was completed immediately prior to the N12 notice of termination being served. The Landlords also told the Board that they are 100% shareholders of the Corporation.
7. The parties agreed that in June 2024, the Corporation purchased the rental unit, and the entire residential complex. The parties also further agreed that on October 25, 2024, the Landlords purchased a 1% ownership from the Corporation and that 5 days after obtaining the 1% ownership of the rental unit, they served the Tenants with the N12 notice.
8. The Tenants' representative requested the Board dismiss the application pursuant to section 48(5) of the *Residential Tenancies Act, 2006* (the 'Act') on the basis that the Landlords are not entitled to serve the N12 notice as the true Landlord is a corporation.
9. Section 48(5) of the Act states:

This section does not authorize a Landlords 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 Landlords is an individual. 2017, c. 13, s. 7 (2).

[Emphasis Added]

10. The Landlords' representative opposed the Tenants position as the rental unit is owned in part by an individual(s) (the newly named Landlords) and this allowed the Landlords to serve the N12 notice on the Tenants, which meant they were in compliance with section 48(5)(a).
11. On the basis of the evidence before me, I recognize that the definition of "landlord" in section 2(1) of the Act includes "an owner of the unit", that the named Landlords are now 1 percent owners of the unit, and that they have served the Tenants with the N12 notice of termination in their own names. I also acknowledge that the named Landlords have always been the owners of the corporation.
12. However, having considered the evidence before me, including the landlord and tenant relationship with the corporation throughout the tenancy and the timing of the 1 percent share transfer, I find that the sole purpose of the share transfer was to enable the named Landlords to terminate the tenancy of the Tenants, as they specifically knew that their corporation could not do so. The sole purpose for the change in ownership was to evade the prohibition contained in section 48(5) of the Act. I make this finding for the reasons that follow.
13. Section 202(1) of the Act states:

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.

14. Taking into consideration Section 202 (1) of the Act and the facts before me, I find that although the Landlords own a nominal interest in the rental unit, the true Landlord is the Corporation, a corporate entity. All parties agreed that the Tenants pay their rent solely to the Corporation and have done this since June 2024. When I asked the Landlords about why the Tenants only pay the Corporation, the Landlords stated it was done this way at the request of their accountant. In other words, it was an intentional decision to have the Corporation as the Tenants' landlord when they obtained ownership of the building.
15. Furthermore, in making my decision, I considered the fact the Landlords obtained a 1 percent ownership of the residential complex just 5 days before serving the Tenants the N12 notice. I do not find their explanation is sufficient to overcome the requirements of section 48(5) of the Act and in consideration of section 202. It was the Landlords' own evidence that they consulted with their lawyer and accountant and determined that they had to purchase a 1% ownership from the Corporation to be able to serve the N12 notice to terminate the tenancy and evict the Tenants.
16. In the case of *Pinto v. Regan and White v. Regan*, 2021 ONSC 5502, the Divisional Court stated that in considering the application of section 202 of the Act, the Board is obligated to ascertain the real substance of the transactions and activities regarding the rental unit and the good faith of the parties regarding the notice of termination. They held that the Board must consider the evidence to determine the elements of good faith, including how the parties conducted themselves towards each other at the end of their relationship.
17. Further, in the recent case of *Lokhouse v. Ewing*, 2024 ONSC 6789, the Divisional Court reaffirmed that even closely held corporations may not serve a notice of termination under section 48(5) of the Act.
18. Based on the above, I find that the Landlords did not have good faith in transferring 1 percent ownership of the Corporation to themselves in order to circumvent the Act. Therefore, I find the true Landlord is the Corporation and as per section 48(5)(b) of the Act, the Landlord is not an individual. This interpretation is consistent with the intent of section 48(5) of the Act, which is to deny corporate landlords the right to evict tenants for landlord's own use applications.
19. The Landlords' application must be dismissed as it fails to comply with section 48 of the Act.

It is ordered that:

1. The Landlords' application is dismissed.

April 23, 2025

Date Issued

Vishal Nanda

Vishal Nanda

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.