

Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-12891-18

KB (the 'Landlord') applied for an order to terminate the tenancy and evict KB (the 'Tenant') because the Landlord 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 in Waterloo on April 4, 2018. The Landlord attended the hearing. The Tenant and the Tenant's Legal Representative, TVH, attended the hearing.

Determinations:

1. The Landlord served the Tenant with a Notice to Terminate at End of the Term for Landlord's or Purchaser's Own Use (Form N12) on December 1, 2017. The termination date on the N12 notice was February 1, 2018. The Landlord filed his L2 application to evict the Tenant on January 25, 2018.
2. The Tenant was in possession of the rental unit at the time the Landlord filed his application. The Tenant vacated the rental unit on or about February 4, 2018. The Landlord is now living in the rental unit with his fiancée.
3. As the tenancy is no longer live, there is no need to consider the merits of the Landlord's application to evict the Tenant. The application is moot. However, other issues arose in the hearing which I will briefly detail below.

N12 Notice is Invalid

4. Section 48 of the *Residential Tenancies Act, 2006* ('the Act') sets out that a Landlord may terminate a tenancy if the Landlord in good faith requires possession of the rental unit for the purposes of residential occupation by the Landlord. The section goes on to specify that the termination date on the Notice to Terminate at End of the Term for Landlord's or Purchaser's Own Use (Form N12) must be at least 60 days after the notice is given and must be the day a period of the tenancy ends.
5. The Landlord testified that the tenancy is month to month, and rent is due on the first of every month. This means the period of the tenancy is monthly, and the period of the tenancy begins on the first day of the month and ends on the last day of the month. Therefore, to be in compliance with section 48 of the Act, the termination date on the Landlord's N12 notice must be the last day of the month. In this case, as the termination date of the notice was not the last day of the month, the notice is in contravention of section 48 of the Act.

Landlord's Request for a Refund of the Compensation Paid to the Tenant

6. The Landlord asserted that, in accordance with section 48.1 of the Act, he compensated the Tenant an amount equivalent to one month's rent, or \$714.00, prior to filing his L2 application. The Landlord requested the Board order the Tenant to pay back the compensation the Landlord paid to the Tenant.
7. The Landlord testified that the Tenant contacted him on January 23, 2018 to advise that she had not been able to find another place to live and would not be vacating the rental unit pursuant to the N12 notice. The Landlord and his fiancée were left without any options, so they incurred the expense of renting another property for two months. The Tenant then vacated the rental unit on or about February 4, 2018. By that time, it was too late for the Landlord to get out of his newly-rented unit.
8. The Tenant did not dispute any of the Landlord's testimony respecting the Tenant's move from the rental unit.

Analysis:

9. Section 48.1 of the Act states that a landlord must 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 an N12 notice of termination of the tenancy under section 48.
10. Section 73.1 of the Act sets out that if a landlord compensates a tenant under section 48.1 after serving a notice of termination under section 48, and the Board refuses to grant the landlord's application for an order terminating the tenancy and evicting the tenant based on the notice, the Board may order that the tenant pay back the compensation to the landlord.
11. In this case, I am satisfied that the Landlord compensated the Tenant as per section 48.1.
12. If the facts before me were that the Tenant was still in possession of the rental unit and the application was being dismissed because of invalidity of the N12 Notice, I would order the Tenant to refund the compensation to the Landlord. However, in this case, I am satisfied that the Tenant vacated on February 4, 2018, as a direct result of being served with the N12 notice. This is established by the fact that she contacted the Landlord on January 23, 2018 to advise that she could not move out by February 1 as demanded by the N12, but managed to secure new accommodations and vacated within the first week of February 2018. In my view, the intent of section 48.1 is to require a landlord to pay the tenant compensation equal to one month's rent where the landlord obtains vacant possession of the rental unit for the purpose of residential occupation. That is exactly what happened in this case, and the Tenant is entitled to keep the compensation she was given by the Landlord.
13. I do not agree that just because the Tenant did not vacate by the termination date in the N12 (flawed as it may be), it follows that the Landlord is entitled to a refund of the compensation paid to the Tenant. There is nothing in the Act to support such an interpretation. In fact, the Tenant was entitled to stay in the rental unit past the termination date on the N12 notice and await a hearing of the Landlord's application. The

N12 notice itself indicates that the tenant may choose not to voluntarily move out of the rental unit by the termination date and can instead require the landlord to file an application at the Board and prove the merits of their claim at a Board hearing. Tenants who exercise this right do not lose their entitlement to compensation pursuant to section 48.1 of the Act.

14. Some landlords choose to file their L2 applications in advance of the termination dates on their N12 notices, in order to try to secure vacant possession of their rental units by the termination date listed on their Notice. In this case, the Landlord did not make that choice. The Tenant is not responsible for the fact that the Landlord chose not to file his L2 application sooner, nor that the Landlord had to find somewhere else to live while waiting for a hearing on the merits of the Landlord's application.
15. The Tenant's Legal Representative also submitted that since the N12 notice was invalid, it should be considered as never having existed, and therefore there was no basis for the Landlord's claim for a refund of the compensation. In the alternative, the Tenant's Legal Representative pointed to subsection 134 (1.1) of the Act, which sets out that a landlord is prohibited from attempting to collect from a former tenant any amount of rent for a period after the tenancy has terminated and after tenant has vacated the rental unit. Given my above determinations, there is no need for me to address these arguments.

It is ordered that:

1. The Landlord's application is dismissed.

April 6, 2018
Date Issued

Melanie Love
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.