



Order under Section 69 / 89 Residential Tenancies Act, 2006

Citation: Francis v Hamilton, 2026 ONLTB 4704

Date: 2026-01-14

File Number: LTB-L-087977-23

In the matter of: 1B, 399 KIPLING AVE
ETOBICOKE ON M8V3K8

Between: Carlos Francis Landlord

And

Adrienne Hamilton Tenants
Marc Saint-cyr

Carlos Francis (the 'Landlord') applied for an order to terminate the tenancy and evict Adrienne Hamilton and Marc Saint-cyr (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.

Carlos Francis (the 'Landlord') also applied for an order requiring Adrienne Hamilton and Marc Saint-cyr (the 'Tenants') to pay the Landlord's reasonable out-of-pocket costs the Landlord has incurred or will incur to repair or replace undue damage to property. The damage was caused wilfully or negligently by the Tenants, another occupant of the rental unit or someone the Tenants permitted in the residential complex.

This application was heard by videoconference on April 11, 2024 and October 17, 2024.

The Landlord and the Tenants attended both hearings.

Determinations:

1. As explained below, since the Landlord did not provide the required one month's compensation to the Tenants by the termination date on the N12 notice of termination, the mandatory requirements of sections 48.1 & 55.1 of the *Residential Tenancies Act*, 2006 (the 'Act') were not fulfilled. The Landlord has also not proven on a balance of probabilities the grounds for compensation in the application. Therefore, the application is dismissed.

2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice:

3. On November 1, 2023, the Landlord gave the Tenants an N12 notice of termination deemed served that same day with the termination date of December 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.
4. At the hearing, the Tenants raised the issue that the Landlord did not provide them with one month's compensation prior to the termination date in the N12 notice as required under the Act.
5. The Landlord testified at the April 11, 2024 hearing that the Tenants did not pay December rent charges on December 1, 2023. The Landlord stated he attended the unit later that week and informed the Tenants in person that he would waive the rent for December 2023 as the required compensation for the N12 notice. The Landlord further testified that the Tenants had stopped paying the rent after October 2023. At the October 17, 2024 hearing, the Landlord stated he gave the Tenants an N4 Notice of Termination and applied to the Board for an order for non-payment of rent and eviction (L1 application) which did not include December 2023's rent as owing.
6. The Tenants did not dispute that they did not pay rent for December 2023, however, they maintained no such conversation took place in early December telling them that rent for that month was waived in lieu of compensation for the N12 Notice.
7. Section 48.1 of the Act states:

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.

8. Section 55.1 of the Act states:

If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant **no later than on the termination date specified in the notice of termination of the tenancy** given by the landlord under section 48, 49 or 50.

[emphasis added]

9. Section 83(4) of the Act states:

The Board shall not issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation, demolition, conversion to non-residential rental use, renovations or repairs until the landlord has complied with section 48.1, 49.1, 52, 54 or 55, as the case may be.

10. The Act specifies that the compensation must be paid no later than the termination date specified in the N12 Notice. In this case, that date was December 31, 2023.
11. The issue of compensation is clearly disputed, and it is essentially one person's word over the other. Since this is a landlord application, the burden of proof rests on the Landlord to prove, on a balance of probabilities, that compensation was explicitly communicated and paid to the Tenants prior to December 31, 2023. Having considered the evidence and submissions before me, I am not satisfied the Landlord has met the statutory requirement of section 55.1 of the Act. As such, I have no authority to issue an eviction order terminating this tenancy per subsection 83(4) of the Act.
12. When a landlord seeks to waive arrears as a method by which to give compensation to the tenant but has not communicated this to the tenant, the landlord has not satisfied the obligation. If the landlord communicates the waiver of arrears to the tenant prior to the termination date in the N12 notice, the landlord has satisfied the obligation. The Landlord maintains that he waived the rent for December 2023 after informing the Tenants in person of this intention. However, the Landlord did not provide any written supporting evidence, which is necessary in this case, given the divergent oral evidence between the parties. The Landlord testified they communicated in writing due to their poor relationship, yet no such correspondence, such as an email or text, was submitted at the hearing to substantiate the early December meeting took place about the waiver of December 2023 rent in lieu of compensation for the N12 notice. I considered the Landlord's evidence that he filed an L1 application and claim that December 2023 rent was not sought, but the Landlord did not provide the N4 notice or a copy of the L1 application which was available and expected evidence for such a claim.
13. Although I heard evidence regarding the merit of the N12 notice, after further consideration and after listening to hearing record, I am not satisfied the Landlord has proven on a balance of probabilities that compensation equal to month's rent was paid to the Tenants prior to the termination date in accordance with section 55.1 of the Act.
14. The question now turns to whether I would use the discretion afforded to me by subsection 190(2) of the Act to extend the deadline for the payment of compensation in section 55.1 and allow the compensation to be deemed paid after the termination date stated in the N12 notice. Having considered the evidence before me, I am electing not to exercise any discretion to extend the deadline.
15. The statutory requirement that the Landlord pay compensation within a defined timeframe is unambiguous, and a measure designed to protect a tenant. In this instance, there were no mitigating circumstances or satisfactory reasons given to account for the why the Tenants were not expressly informed that rent for December 2023 would be waived as compensation prior to the termination date in the N12 notice. Consequently, the portion of the Landlord's application seeking termination of the tenancy must be dismissed.

Compensation for Damages:

16. The Landlord's application also claimed that the Tenants, another occupant of the rental unit or a person whom the Tenants permitted in the residential complex wilfully or negligently caused undue damage to the rental unit or residential complex. However, no

evidence was led or presented about the claim. Therefore, this portion of the application must be also dismissed.

It is ordered that:

1. The application is dismissed.

January 14, 2026
Date Issued

Fotoula Hatzantonis
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.