



Order under Section 69 Residential Tenancies Act, 2006

Citation: Azubalis v Mason, 2026 ONLTB 1677

Date: 2026-01-20

File Number: LTB-L-069973-22

In the matter of: A, 308 INDIAN RD
TORONTO ON M6R2X6

Between: Anna Azubalis Landlord

and

Jessica Mason Tenant

Anna Azubalis (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Mason (the 'Tenant') 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 Tenant remained in the unit after the termination date.

Following the decision of the Divisional Court in *Mason v. Azubalis*, 2025 ONSC 5770, the new hearing of this application was heard by videoconference on December 2, 2025.

The Landlord's Legal Representative, Vilijia Ycas, the Landlord, the Tenant's Legal Representative, Samuel Mason, and the Tenant attended the hearing. Dala Azubalis attended the hearing to assist the Landlord with interpretation between English and Lithuanian. The Landlord chose to only be present and have interpretation when it was time for her to testify.

John Azubalis, the Landlord's son, attended the hearing as a witness for the Landlord and all parties agreed his evidence should be and it was heard first.

The other witnesses were excluded from the hearing until it was time for them to give their evidence. Stella Chomiak, the Landlord's niece, attended as a witness for the Landlord (the 'Landlord's witness') and Lana Pelegrin, an environmental public health inspector with Toronto Public Health, was summonsed by the Tenant (the 'Tenant's witness').

Determinations:

1. For the reasons set out below, the Landlord's application is dismissed as I find the N12 Notice was delivered, and the application therefore brought, because the Tenant complained to a governmental authority and/or attempted to secure or enforce her rights with respect to the removal of lead paint from the rental unit bathroom. The Tenant is ordered to return the one month's compensation to the Landlord.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination - Landlord's Own Use

3. The residential complex is a 3-storey building. The Tenant has lived in the second-floor rental unit since the summer of 2014. As at August 2022, the Landlord, her son, his wife, and their three adult sons lived in the first-floor and basement unit and another tenant lived in the third-floor unit.
4. On this application for termination and eviction the Landlord must prove that:
 - a. the N12 notice of termination is valid;
 - b. the application and all supporting documents were filed in accordance with the requirements under the *Residential Tenancies Act, 2006* (the 'Act') or otherwise accepted;
 - c. compensation was paid in accordance with the Act; and,
 - d. the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for the period of at least one year for a permissible category of individual identified on the N12 Notice.
5. Additionally, as with any application for an order evicting a tenant, under s. 83 of the Act the LTB must review the circumstances and consider whether there is any reason to delay or deny eviction and must refuse to grant the application where satisfied any of the circumstances identified under s. 83(3) are present.
6. The parties agree that on August 27, 2022, the Landlord gave the Tenant an N12 Notice for vacant possession of the rental unit so that her son could move in and occupy it for at least one year. The N12 Notice had a termination date of October 31, 2022, and I find it was valid.
7. The LTB's records also show this application was filed within time on November 22, 2022, and no issues were raised with respect to the filing of any required accompanying materials.
8. Additionally, the parties agreed the Landlord compensated the Tenant \$1,400.00 i.e. one month's rent, on or before the termination date of October 31, 2022.
9. What was disputed was whether the N12 Notice was served in good faith, and whether the Landlord's application should be dismissed under s. 83(3) of the Act, or relief from eviction otherwise granted.

Whose good faith?

10. The Landlord is the owner of the rental unit and is, by definition, a landlord under s. 2(1) the Act.
11. The Landlord is 97 years-old and English is not her first language. Because of the language barrier, and as his mother began to experience more limitations, the Landlord's son was the one who primarily dealt with the tenants. That said, the Landlord's son testified his mother always made any final determinations and that these were generally reached after she had consulted with her confidante and niece – the Landlord's witness.
12. The Landlord's witness testified her role was to help run things by the Landlord and let her know what is going on. She testified her involvement helped reduce tensions. In these circumstances, I do not find the Landlord's witness was a landlord under the definition of Landlord in the Act.
13. Although the Landlord's son may have qualified as a landlord under the definition of landlord under s. 2(1) of the Act this was not raised by either party at the hearing. Instead, the N12 Notice and application were each completed in the name of the owner – i.e. the Landlord.
14. Therefore, with respect to the issue of good faith I find it appropriate to consider both whether the Landlord served the N12 Notice in good faith for her son to live in the rental unit for one year and whether the Landlord's son genuinely intends to occupy the rental unit for a period of one year.
15. I find the evidence presented by and on behalf of the Landlord was sufficient that, if accepted in its entirety and preferred over that of the Tenant's – issues on which I make no determination - the Landlord would have met her burden of proving her application on the merits leaving only s. 83 to be considered.
16. However, with respect to section 83, I find the question of whether the Landlord's application was retaliatory and so must be refused under ss. 83(3)(b) and/or (c) of the Act is ultimately determinative.

Relevant positions and law

17. The Tenant submits the N12 Notice was delivered, and this application therefore brought, because she attempted to secure or enforce her rights regarding the removal of lead paint from the bathroom both with the Landlord and Toronto Public Health ('TPH') and/or that she complained to TPH about the Landlord's failure to address these issues.
18. The Landlord submits the N12 Notice was the result of a considered family decision based on a long-standing need to alleviate familial pressures and provide the Landlord's son and his wife with close but separate living quarters.
19. Both parties' representatives made submissions with respect to how sub-sections 83(3)(b) and (c) of the Act should be interpreted. These subsections provide:

83(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

...

(b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

20. The Landlord rightly submits that an application cannot be refused under ss. 83(3)(b) or (c) unless the sole or primary reason for bringing the application is retaliatory.
21. The Landlord relies on *MacNeil v. 976445 Ontario Ltd.*, [2005] O.J. No. 6362, where, despite some tension with one of the tenants, the LTB held there was no individual motivation or vindictiveness involved in the service of N13s on all residents in a mobile home park. The landlord there had made a business, as opposed to a personal, decision to close the park and so mandatory refusal of the application did not apply.
22. Additionally, the Landlord notes at para. 26 of *MacNeil*, the Divisional Court discusses how the language in these subsections was specifically amended to replace "a reason" with "the reason". [For a more recent affirmation of this point see also *Okoye v. De Melo*, 2021 ONSC 6201, at para. 17].
23. The Landlord submits the delivery of the N12 Notice was not a spontaneous reaction to the lead paint issues the Tenant was raising and any proximity in timing may be coincidental. Further, even if the lead paint in the bathroom issues were a partial motivation or reason, as this was not the sole or primary reason the N12 Notice was delivered, mandatory refusal is not applicable.
24. The Tenant submits the issue to be determined is not one of substance but one of timing. They rely on *Le Loc v. O'Grady*, 2018 ONSC 6387, where the Divisional Court considered an application based on an N12 Notice for landlord's own use, found the landlord genuinely intended to occupy the unit; but, nonetheless dismissed the application pursuant to s. 83(3)(c) of the Act.
25. The landlord in *Le Loc* had asked the tenants to pay a rent increase significantly above the permissible guideline. The tenants refused and, although they were open to agreeing to an increase if service and facilities were improved, the landlord and tenants were unable to reach an agreement. The landlord then served a N12 Notice.
26. The LTB held the landlord decided to repossess the rental unit because the tenants refused the unlawful rent increase and dismissed the application. The Divisional Court upheld the LTB's findings at para. 20 finding, "[t]he precipitating event was not the Landlord's desire to occupy the premises himself. It was the Tenants' refusal to accede to his unlawful demand".

27. Having considered the above case law and the parties' submissions, I find that in considering whether the Landlord's application is retaliatory and must be refused under s. 83(3)(b) and/or (c) I must determine the precipitating event for the delivery of the underlying notice of termination.

Landlord's evidence regarding the decision to deliver the N12 Notice

28. The Landlord has lived in the property for over 50 years. Her son grew up there and also now lives there with his wife and sons.
29. The Landlord's son testified that even before the Tenant moved into the rental unit there was discussion of him and his family living on the second and/or third floor; but, multi-generational living with the Landlord's involvement had been fun.
30. The Landlord's witness testified discussions about the family needing more space were ongoing. She testified no N12 Notice was served before COVID because the family decided they still wanted to receive the rent.
31. Following COVID, the multi-generational living arrangements became strained and there was increased difficulty. The grandsons were in their late teens and early twenties learning remotely at University and high school, the Landlord was in her mid 90s with frail and declining health and was being cared for by the Landlord's son and his wife, and the Landlord's son had his own heart and mental health issues.
32. Around the same time the Landlord's other son was also experiencing health issues and there was concern he may also need to come and live with them.
33. In the above circumstances, more space and privacy was required.
34. The Landlord's son testified he filled out the N12 Notice, the Landlord's witness reviewed it with the Landlord, and the Landlord then signed it.
35. The Landlord could not recall why she had signed the N12 Notice; although, she testified that her family needs more space.
36. The Landlord's son testified no steps were taken during COVID because they understood no tenants could be evicted. He testified they waited until the COVID restrictions were essentially lifted before the Tenant was served with the N12 Notice.
37. The Landlord's witness testified after COVID it was still a difficult time as the family had many ongoing personal issues. The Landlord's witness testified the Landlord did not wish to rent anymore and instead wanted to take over the whole house but the process was unknown and so it took months of research and discussion before anything was done.
38. No N12 Notice was ever issued for the third-floor tenant as the Landlord's witness testified the Landlord was focused on the second floor and the third-floor tenant would be addressed after.
39. As at the date of hearing, the Landlord's eldest grandson had moved out and the Landlord's other son did not move in. As a result, the strained dynamics have been reduced; although, they are still present.

40. The Landlord's son further advised they now intend to take over the whole house as the third-floor tenant moved out in March 2025 and the unit has not been re-rented.

Issues with lead paint in the bathroom

41. The paint on the ceiling of the rental unit's bathroom was peeling for many years and the Landlord's son admitted they were aware of this issue. He testified this was caused by moisture and condensation from showers and they typically tried to address it in between tenants.
42. When the Tenant was expecting in July 2021, she had some lead testing done. Her primary concern was lead in the drinking water; although, environmental testing was also conducted.
43. The concern with lead paint is primarily when it becomes chipped or pulverized. Additionally, when lead paint is peeling there can be concerns if it becomes ground into smaller parts.
44. The Tenant testified she did not become aware of the results that showed there was lead in the bathroom paint until July 2022 - after the testing company she had used followed up with her about payment.
45. On July 14, 2022, the Tenant forwarded the Landlord's son the results and advice she had received about how to deal with lead paint.
46. On July 19, 2022, the Tenant again raised concern about lead in the bathroom paint, provided links to websites, and asked that the Landlord hold off on painting the bathroom until it had been investigated.
47. The Landlord's son reassured the Tenant his contractor had experience with the safe removal of lead paint. The Tenant was thankful but nonetheless sought additional information and reassurance including whether doors were sealed, whether protective masks were worn, and if the Landlord's son had supervised the work.
48. On July 24, 2022, the Landlord's son reported the work was complete and that all had been thoroughly cleaned. The Tenant continued to ask for information including what precautions had been taken, and advised she was going to have swab tests done to check for lead particles before returning.
49. The Landlord's son testified he did not reply to the Tenant as he found the timing of her raising these issues convenient, and inconsistent with her living there for a year after the results of her testing. As a result, he took her concerns with a grain of salt. He also testified he did not have a basis on which to find her results reliable as he did not know how or where the samples were collected.
50. On July 29, 2022, the Tenant called the Landlord's son and forwarded him the new test results for residual lead. The Landlord's son hung up abruptly.

51. The Landlord's son admitted he was frustrated and angry. He was satisfied his contractor had done everything safely and properly, the Landlord had paid for the work, his wife, a professional cleaner, had cleaned everything, and so there was no reason for the Tenant to continue fighting for this or to conduct retesting. He felt the Tenant was trying to tell him how to do his job.
52. From the Landlord's son's perspective, they had remediated, lead paint is a common issue in old houses, they never had any health issues with it growing up in the house, and if the Tenant did not like it, then she could always choose to leave.
53. On August 3, 2022, it was determined a sample from the bathroom exceeded the known applicable lead limit. On August 4, 2022, it was recommended that the Tenant's child not go in the bathroom, dust not be permitted to accumulate, a thorough cleaning be performed, and retesting done to ensure clearance.
54. The Tenant followed up with the Landlord's son on August 3, 2022. Her communications regarding the lead paint went unanswered.
55. On August 4, 2022, the Tenant contacted TPH. She spoke with a public health inspector – the Tenant's witness and the Tenant's witness received the Tenant's reports regarding lead in paint samples the next day.
56. On August 12, 2022, the Tenant emailed the Landlord's son a summary of her concerns, in particular that her one-year-old would ingest lead dust particles from the work done while crawling around the rental unit, and her chronology of events.
57. On August 18, 2022, the Tenant's witness contacted and spoke with the Landlord's son. She advised him of the concerns, what she had been forwarded, and said he should consult an environmental consultant to ensure proper clearing and cleaning was carried out. The Tenant's witness testified the Landlord's son refused to do so and questioned the lab reports. He advised the Tenant's witness of the steps taken including tarping off the areas, clearing, and repainting.
58. The Tenant's witness testified she tended to agree with the Landlord's son; but, nonetheless advised it was a good idea to obtain his own sampling and reports to be sure there was clearance for lead. No public health orders issued, no official follow-up was required, and there were no citations for unsafe conditions.
59. The same day TPH contacted him and he spoke with the Tenant's witness, the Landlord's son responded to the Tenant's email.
60. A few days later, on August 22, 2022, the Landlord's son proposed they meet on August 24, 2022 – the date the Landlord signed the N12 Notice.
61. The Landlord testified she did not know whether the decision to deliver the N12 Notice was made because of the paint issues or even whether these had been fixed.

62. After some back and forth, the Tenant agreed to meet the Landlord's son at the rental unit on August 27, 2022.
63. The Tenant also provided further information she had collected regarding lead paint remediation; but, the Landlord's son did not respond to these issues.
64. On August 27, 2022, the Landlord's son and Tenant met. The Landlord's son gave the Tenant the N12 Notice and advised her any further communications should be directed to their lawyer.
65. On August 29, 2022, the Landlord's son told the Tenant's witness they had served the Tenant with a N12 Notice.
66. On September 16, 2022, the Tenant's witness testified the Tenant told her the new bathroom floor samples she had submitted were cleared for lead. TPH then closed its file.

Analysis

67. Outside of a general desire for more space, I find the Landlord did not know why she signed the N12 Notice when she did.
68. I find the decision of when to deliver the N12 Notice was driven by the Landlord's son. He was the one who spoke with the Tenant, completed the N12 Notice for his mother's signature, and arranged to meet the Tenant and give her the N12 Notice.
69. I further find the circumstances and timing of the events immediately before the delivery of the N12 Notice support finding the Landlord's son decided to complete the N12 Notice when he did because the Tenant was continuing to press for remediation of the lead paint issue and had complained to TPH.
70. The Landlords' son was angry with the Tenant for telling him how to do his job. I find he did not give credence to her continuing concerns, and did not intend to take any further steps instead being of the view that she could always choose to leave.
71. Having not previously responded to the Tenant's latest email about the lead paint issues, the Landlord's son then replied the same day he was contacted by TPH, and a plan was shortly in place for him to meet with the Tenant and give her the N12 Notice.
72. I find the Landlord's son's reasoning as to why they delivered the N12 Notice when they did does not accord with the fact that the last moratorium against evictions in Ontario ended on March 8, 2021 when O. Reg. 13/21: Residential Evictions was revoked - almost a year and a half before the N12 Notice was delivered.
73. The Landlord and her son have been living together with various permutations of their family for decades. I accept that COVID increased tensions and there was a desire for more space and privacy. However, I was not satisfied that even accepting there were ongoing personal issues and months of research and discussion, that this adequately

explained why there was almost a year and a half delay in delivering the N12 Notice after the eviction moratoriums ended.

74. Further, I find it was not until the Tenant's inquiries regarding the efficacy of the removal of the lead paint reached a head and TPH spoke with the Landlord's son that steps were taken to fill in and deliver the N12 Notice.
75. I do not find it plausible that the culmination of many years and/or months of research and discussion accidentally coincided with this call. I find it more likely than not that the precipitating event for the preparation of the N12 Notice was the call from TPH and not any genuine intention to occupy.
76. I further do not find the Tenant had to have started a tenant's application to find she was attempting to secure or enforce her maintenance rights nor that there must have been an Order or other requirement or citation from a governmental authority in order to find the Tenant had complained to a governmental authority.
77. There was evidence that remediation of the lead paint was an issue that had not yet been resolved, the Tenant raised her concerns with the Landlord's son and with TPH, and TPH engaged in an investigation of the issue that had not been closed at the time the N12 Notice was given.
78. In taking the above actions, I find the Tenant was attempting to secure and/or enforce her rights under s. 20 of the Act and I find the Tenant's communications with TPH were also a complaint to a governmental authority about the Landlord's failure to fulfil their maintenance obligations.
79. In the above circumstances, I find it more likely than not that the N12 Notice was given to the Tenant and this application brought, because the Tenant was attempting to secure or enforce her rights by ensuring the lead paint had been properly remediated in accordance with s. 20 of the Act and/or because she complained about this to TPH.
80. As a result, I find the Landlord's application must be dismissed.

Return of one month's compensation

81. In accordance with section 73.1(1) of the Act, the Landlord asked that the one month's compensation they paid to the Tenant be ordered to be paid back to them if their application was dismissed and this is so ordered.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant shall pay the Landlord \$1,400.00 for the return of the one month's compensation.

3. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2026, at 4.00% annually on the balance outstanding.

January 20, 2026

Date Issued

Rebecca Case

Vice Chair, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.