



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

Citation: Garofalo v Shelburne Chiropractic, 2023 ONLTB 56704

Date: 2023-08-16

File Number: LTB-L-059986-22

In the matter of: 195 HUTCHINSON DR
ALLISTON ON L9R0P9

Between: Rita Garofalo
Gabriella Maia

And

Stephanie Juffs

I hereby certify this is a
true copy of an Order dated
Aug 16 2023
Landlord and Tenant Board

Landlords

Tenant

Rita Garofalo and Gabriella Maia (the 'Landlords') applied for an order to terminate the tenancy and evict Shelburne Chiropractic and Stephanie Juffs (the 'Tenant') 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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on August 8, 2023.

The Landlords, the Landlords' Representative, J. Nieuwhof, the Tenant, and the Tenant's Representatives, Sarah McGrory and Mitchell Kent attended the hearing.

The application was amended and 'Shelburne Chiropractic' has been removed as a party as reflected in the style of cause of this order.

Determinations:

1. As explained below, the Landlords' have not met the statutory requirement of section 71.1 of the Act. Therefore, the application is dismissed.

N12 Notice of Termination

2. On October 12, 2022, the Landlords gave the Tenant an N12 notice of termination with the termination date of December 14, 2022. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child. The Landlords also filed a declaration which they both signed that affirmed they would be

moving into the unit. This declaration accompanied the application on October 17, 2022 when the application was filed. On April 5, 2023, the Landlords filed another declaration signed by their child.

3. **Section 71.1** (1) of the Act, states, “A landlord who, on or after the day subsection 11 (1) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48 or 49 shall file the affidavit required under subsection 72 (1) at the same time as the application is filed. 2020, c. 16, Sched. 4, s. 11 (1).”
4. **Section 71,1(2)** of the Act states, “The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (1). 2020, c. 16, Sched. 4, s. 11 (1).”
5. The Board’s Rules allows a declaration to be submitted. In this case the termination notice was given under section 48 of the Act and the declaration that the Landlords rely on is from a child and it was filed almost 6 months after the application was filed. The Board cannot consider the merits of the application because the Landlord have not met the statutory requirement of section 71.1(2) which makes it mandatory for the Board to refuse to accept the application. I considered Order HOL-12135-21 and I am not bound by another Member’s decision. I will point out that the order did not include reasons to explain the conclusion reached having granted eviction when section 71.1 was not met.
6. The declaration by the Landlords that accompanied the application when it was filed doesn’t meet the statutory requirement of section 72(1)(b) of the Act because it was not an affidavit sworn [declaration] by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use.

It is ordered that:

1. The application is dismissed.

August 16, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6



Sandra Macchione

Member, Landlord and Tenant Board

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