



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

Citation: French v Donovan, 2023 ONLTB 34006

Date: 2023-05-03

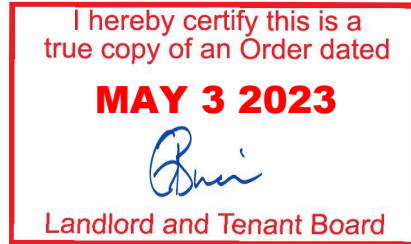
File Number: LTB-L-040656-22

In the matter of: Apt #1, 20 VALLEY DR
BRACEBRIDGE ON P1L1B8

Between: Reid French

And

Heather Donovan



Landlord

Tenant

Reid French (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Donovan (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.

This application was heard by videoconference on March 20, 2023.

The Landlord's legal representative, Ben Tick, and the Landlord (RF), attended the hearing.

The Landlord's wife and affiant, Mandi Lorenzini (ML) also attended the hearing.

The Tenant also attended the hearing.

Determinations:

1. The Tenant is in possession of the rental unit.
2. This is a month to month tenancy in which rent is due on the first of each month in the amount of \$800.00.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The rental unit is a semi detached house. The Landlord lives in one rental unit and the Tenant lives in the other. The Tenant's unit has 2 bedrooms, a bathroom, open concept living and dining area.

5. On May 25, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of July 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's spouse.
6. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required, in which the affiant, his spouse stated she intends to move into the rental unit for no less than one year.
7. There is no dispute the Landlord paid the Tenant compensation in the amount equal to one month's rent pursuant to s.48(1) of the Act by waiving the lawful rent for June, 1, 2022.
8. The Tenant was required to pay the Landlord \$6,101.92 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to March 20, 2023.
9. Based on the Monthly rent, the daily compensation is \$26.30. This amount is calculated as follows: \$800.00 x 12, divided by 365 days.
10. There is no last month's rent deposit.

LAW AND ANALYSIS

11. According to s.48(1) of the Act:

A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

b) the landlord's spouse;...

12. The position of the Landlord is he and his spouse had briefly separated and ML had moved in with her mother with the couple's children. The Landlord and his wife have recently reconciled and wish to reunite the family. The Landlord lives in the upstairs rental of the house and requires the unit so his wife and children, ages 18 months and 5 years old, can move into the rental unit so they may rejoin as a family in one home.
13. ML currently lives with her mother in a 3 bedroom home. ML's 5 year old attends a school that is located closer to the rental unit.
14. ML testified that since her and RF have reconciled, she wants to move into the rental unit with her children so they can live in the same house as RF and so RF can see his children everyday.
15. ML and RF testified the intent is to remove the door that separates the 2 rental units and make use of the entire house where they can be a family again.
16. The Landlord is seeking a standard order for eviction.
17. The position of the Tenant is that she has been a Tenant for 10 years in the rental unit, long before the RF bought the house.

18. After being served the N12 notice the tenant testified that she has been trying to find a new place to live and has looked at approximately five other rental unit opportunities, however the tenant did not provide any evidence to the Board to support her claim.
19. The Tenant made a claim that the landlord had served the N12 notice in bad faith and stated that the landlord and his wife are currently building a new home to live in and have no intention on living in the rental unit.
20. The Tenant gave no evidence that would lead to a conclusion that the Landlord's spouse does not genuinely intend to move into the rental unit for a period of at least a year. The Tenant's claims the Landlord's are building a new home to live in does not support her claim of bad faith.
21. In *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC) where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
22. In *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) ("Fava"), the Divisional Court, in considering the good faith requirement in s.48(1) of this Act, determined as follows:

"We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the **only issue is whether the landlord has a genuine intent to reside in the property**. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."

[emphasis added].

23. Thus, the Board is entitled to enquire into the motives and conduct of a landlord in determining the issue of good faith and to draw inferences about the landlord's intentions based upon the totality of the evidence presented.
24. Since the Landlord's have not built the new house, they don't have a house to move in to at the time of the hearing. This point is moot as the Landlord is required to prove intent not reasonability in the eyes of the Tenant.
25. I accept ML's testimony as credible and, in my opinion, ML has a genuine intention to move into the rental unit with her 2 children, who are the children of the Landlord, so that the family can live together as a family unit under one roof.

SECTION 83: RELIEF FROM EVICTION

26. The tenant testified that her father had originally intended to help her with finding a new place to live but unfortunately her father had passed away October 27th 2022.
27. The tenant requested an extended eviction date to July 31 2023.

28. The tenant has a 13 year old son who attends school close by and the tenant submitted the son has learning disabilities and cited ADHD and dyslexia and impaired working memory. The tenant did not provide any medical evidence in the form of doctor's notes or medical reports for the Board's consideration in support of her claim. Nonetheless I accept that a termination date before the end of the school year would have a negative impact on any 13 year old and in my opinion a termination date before the end of the school year is not appropriate in this case.
29. Weighing the Tenant's circumstances of having to find new housing accommodations with her 13 year old son, against the requirement for ML to obtain occupancy of the rental unit with her two children, and given that ML is currently living in a three bedroom home with her mother I find a delayed eviction is not unreasonable. While I understand this may present some inconvenience in the short term to ML, and the Landlord in delaying the reuniting of the family, I don't find that ML and the Landlord's circumstances rise to the level of granting the landlord a request for a standard eviction, and therefore I am granting the landlords request for eviction with an extended date.
30. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until June 30, 2023 pursuant to subsection 83(1)(b) of the Act.
31. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
32. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after July 1, 2023.
4. The Tenant shall pay to the Landlord \$6,101.92, which represents compensation for the use of the unit from August 1, 2022 to March 20, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$26.30 per day for the use of the unit starting March 21, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.



May 3, 2023
Date Issued

Greg Brocanier
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on January 1, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.