



**Order under Section 21.2 of the Statutory Powers Procedure Act and
Section 69 Residential Tenancies Act, 2006**

Citation: Whing v Gonyea, 2023 ONLTB 60301

Date: 2023-09-05

File Number: LTB-L-008403-22-RV

In the matter of: Basement, 255 Glebemount Avenue
East York ON M4C3T7

Between: Lloyd Whing

And

Craig Gonyea

I hereby certify this is a
true copy of an Order dated
SEPT. 5, 2023
Landlord and Tenant Board

Landlord

Tenant

Review Order

Lloyd Whing (the 'Landlord') applied for an order to terminate the tenancy and evict Craig Gonyea (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 resolved by order LTB-L-008403-22 issued on January 17, 2023.

On January 23, 2023, the Landlord requested a review of the order.

The request to review and the application were heard by videoconference on February 8, 2023, June 9, 2023, June 12, 2023, and June 14, 2023.

The Landlord's legal representative, Christina Nastas, and the Tenant attended the hearing. The Landlord's witness, Kevin Whing, attended the hearing on June 9, 2023, June 12, 2023, and June 14, 2023. The Tenant's agent, David Mandel, attended the hearing on June 9, 2023 and June 12, 2023.

Preliminary Issue:

1. The Tenant requested an adjournment of the June 14, 2023 hearing on the basis that Mr. Mandel was unable to attend the hearing that day.
2. I denied the Tenant's request because at the hearing on June 12, 2023, Mr. Mandel had agreed to reconvene the hearing on June 14, 2023.

3. I find the Tenant's request to adjourn the hearing on the basis the agent was unable to attend when the agent specifically agreed to that hearing date to be an abuse of process.

Determinations:

4. I am satisfied that the Landlord was not reasonably able to participate in the proceedings because neither he nor his legal representative received the notice of hearing. As a result, I cancelled order LTB-L-008403-22 issued on January 17, 2023 and proceeded to hear the Landlord's application.
5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must move out of the rental unit on or before September 16, 2023. The Landlord has filed a separate application for rental arrears so did not pursue the claim for compensation in this application.
6. On January 13, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by his son, Kevin Whing.
7. Kevin Whing testified that he requires the rental unit for his own residential occupation and that he intends to occupy the rental unit for one year or more.
8. The Tenant contested Kevin Whing's good faith intention to occupy the rental unit, however, the Tenant's evidence in this regard was speculative and not persuasive. As a result, based on Kevin Whing's testimony, I find that Landlord in good faith requires possession of the rental unit for the purpose of his son's residential occupation for a period of at least one year.
9. The Tenant contested whether the Landlord compensated the Tenant an amount equal to one month's rent by March 31, 2022. The Tenant acknowledged receiving payment of one month's rent from the Landlord prior to March 31, 2022, but claimed this amount was unrelated to the notice of termination. I find that the Tenant has failed to prove on a balance of probabilities that this payment was for something other than compensation for the notice of termination. As a result, I am satisfied that the Landlord compensated the Tenant an amount equal to one month's rent by March 31, 2022.
10. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. In this regard, I specifically considered the Tenant's health and financial resources.
11. I also considered whether I should refuse the Landlord's application under subsection 83(3)(a), (b), or (c) however, I am not satisfied that the Tenant has proven on a balance of probabilities that the Landlord is in serious breach of the Landlord's responsibilities under the Act or any material covered in the tenancy agreement, that the reason for the application being brought is that the Tenant complained to a government authority, or that the reason for the application being brought is that the Tenant attempted to secure or enforce his legal rights.

It is ordered that:

1. The request to review order LTB-L-008403-22 issued on January 17, 2023 is granted and the order is cancelled.
2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 16, 2023.
3. If the unit is not vacated on or before September 16, 2023, then starting September 17, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 September 17, 2023.



Richard Ferriss
Member, Landlord and Tenant Board

September 5, 2023
Date Issued

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 March 17, 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.