



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

Citation: Perry v Brooks, 2023 ONLTB 57493

Date: 2023-08-25

File Number: LTB-L-018380-23

In the matter of: 16 DUNKIRK AVE
GUELPH ON N1E4N8

Between: Gretchen Perry

And

Jane Brooks

I hereby certify this is a
true copy of an Order dated
AUG 25, 2023
Landlord and Tenant Board

Landlord

Tenant

Gretchen Perry (the 'Landlord') applied for an order to terminate the tenancy and evict Jane Brooks (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 June 29, 2023. The Landlord, the Landlord's Legal Representative, Jane Dean, and the Tenant attended the hearing. The Tenant spoke to Tenant Duty Counsel prior to the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on September 5, 2023.
2. On February 23, 2023, the Landlord gave the Tenant an N12 notice of termination ('N12 Notice'), deemed served on February 28, 2023, with the termination date of April 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
3. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2023.

Landlord's evidence

5. In her testimony, the Landlord stated she returned to Canada from New Zealand on June 23, 2023 after resigning from her employment on February 10, 2023. She stated her personal belongings were returned to Canada on June 27, 2023. She added that since the Tenant did not vacate the rental unit, she and her spouse have been residing in an Airbnb since June 28, 2023.
6. The Landlord testified the delay in returning to Canada was due to her mother's health and her remaining in New Zealand longer than expected was due to her needing to put her mother's affairs in order before her return to Canada. She also explained that due to her spouse's health, modifications to the rental unit are necessary to assist his disability and it was her expectation that these modifications would take place during May and June 2023.
7. The Landlord's Legal Representative submitted the Landlord's Airbnb confirmation, airline ticket, and shipping confirmation of the Landlord's belongings as evidence. The Airbnb confirmation shows the Landlord is registered as a guest for the period of June 28, 2023 to August 31, 2023. The airline ticket shows the Landlord returned to Canada, specifically Vancouver, BC on June 23, 2023 and arrived in Toronto, ON on June 28, 2023. The shipping confirmation shows an extensive list of items, included furniture, artwork, kitchen wares, and personal effects, being shipped from New Zealand to Canada at a cost of \$26,629.97.

Tenant's evidence

8. In her testimony, the Tenant stated she does not believe the Landlord has returned to Canada on a permanent basis. She stated the Landlord is still listed on her employer's website as employed and that the Landlord's voicemail message indicates she is still employed in New Zealand. The Tenant questioned the legitimacy of the Landlord's evidence arguing the airline ticket was not valid, the items listed on the shipping confirmation could belong to the Landlord's mother, and the Airbnb confirmation is for a short term rental meaning she could leave Canada at any time. The Tenant also argued that she contacted the Landlord's employer seeking confirmation that the Landlord was not longer employed however such a confirmation was not received.
9. The Tenant reiterated it is her belief the Landlord does not intend to remain in Canada on a permanent basis as suggested by the Landlord and believes the N12 Notice was given to her in bad faith.

Analysis

10. The N12 was served pursuant to section 48(1) of the Residential Tenancies Act (the 'Act') which states in part:

48 (1) 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,

- (a) The landlord;

11. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that a sincere 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."
12. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."
13. Based on the evidence before the Board, I am satisfied on a balance of probabilities that the Landlord genuinely intends to live in the rental unit for at least one year for the purpose of residential occupation. The Landlord provided consistent and credible evidence that she is currently living at an Airbnb and she and her spouse would like to move into the rental unit. With respect to the Tenant's assertions that the Landlord does not intend to remain in Canada on a permanent basis, intends to do renovations and the Landlord is still employed in New Zealand, the Tenant provided no concrete evidence to support these allegations. The Landlord disputes the Tenant's allegations and the Tenant called no witnesses to add additional testimony to these allegations.

Relief from eviction

14. The Tenant stated she is a teacher and resides in the rental unit with her two children, aged 8 and 12 years. She stated she has not actively been looking for alternative housing but requested that should she be evicted she would require 30 to 60 days to find a new place to live. She reiterated her belief that the Landlord intends to renovate the rental unit and does not intend to move in.
15. The Landlord's Legal Representative submitted that the Landlord's evidence demonstrates the Landlord is acting in good faith and has a true intention to move into the rental unit. She submitted the Landlord has moved all of their belongings to Canada at a large expense and such an expense would not be spent if the Landlord intended to reside in the rental unit for a temporary period of time. Further, she submitted the Landlord is seeking an order to terminate the tenancy and evict the Tenant.
16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I say this because the test I must apply is whether the N12 Notice was served in good faith. I have considered each and every event described by the Tenant and find that the Landlord's response is both plausible and credible. I accept the testimony of the Landlord and I do not find a pattern of activities that would suggest bad faith. On a balance of probabilities I find the Landlord is genuine in her testimony and requires the rental unit in good faith for residential purposes.

Daily Compensation and rent deposit

17. The Tenant was required to pay the Landlord \$3,945.21 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to June 29, 2023.
18. Based on the Monthly rent, the daily compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
19. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$16.58 is owing to the Tenant for the period from March 1, 2023 to June 29, 2023 .
20. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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 September 5, 2023.
2. If the unit is not vacated on or before September 5, 2023, then starting September 6, 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 September 6, 2023.
4. The Tenant shall pay to the Landlord \$3,945.21, which represents compensation for the use of the unit from May 1, 2023 to June 29, 2023. The Landlord must deduct any monies received from the Tenant for the period above.
5. The Tenant shall also pay the Landlord compensation of \$65.75 per day for the use of the unit starting June 30, 2023 until the date the Tenant moves out of the unit. The Landlord must also deduct any monies received from the Tenant for the above period.
6. The Landlord owes \$2,016.58 which is the amount of the rent deposit and interest on the rent deposit, and this must be deducted from the amount owing by the Tenant.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the Tenant does not pay the Landlord any monies owing on or before September 5, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 6, 2023 at 6.00% annually on the balance outstanding.

August 25, 2023
Date Issued

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



Susan Priest
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on March 6, 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.