



April 03, 2024

Landlord and Tenant Board

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

Citation: Scher v Draper, 2024 ONLTB 23780

Date: 2024-04-03

File Number: LTB-L-099055-23

In the matter of: UNIT A (TWO-BEDROOM UNIT), 2 ANN STREET
HAVELOCK ON K0L1Z0

Between: Suzanne Scher Landlord

And

Donald Draper Tenant

Suzanne Scher (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Draper (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.

This application was heard by videoconference on February 21, 2024.

The Landlord, her Representative Hugh Scher, and the Tenant and his Representative, Nadine Little, attended the hearing.

The Tenant's Representative was in and out of the hearing.

She was not present at 11:56 am for the Landlord's cross examination of her client.

She was not present at 12:13 pm, at the end of the application.

Apparently, she was in another hearing room.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy will be terminated.
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

On November 25, 2023, the Landlord gave the Tenant an N12 notice of termination deemed served on November 30, 2023 with the termination date of January 31, 2024. The

Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.

3. One month's compensation was paid to the Tenant on May 31, 2023.

Does the Landlord require possession of the unit in good faith, for at least one year for her residential accommodation?

The Law

4. As for the first issue, the question is whether the Landlord has a genuine intention to occupy the premises, and not the reasonableness of the landlord's proposal: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).
5. Whether or not the Landlord's intention or motive to occupy the unit is reasonable, therefore, is not the issue: *Beljinac v. Salter* (2001), 201 D.L.R. (4th) 744 (ON Div. Ct.).
6. In paras. 26-27 of that decision, it was found that the Tribunal need not enter into an analysis of the Landlord's various options and once the Landlord is acting in good faith, then it follows that the Landlord does *require* the unit for residential occupation by a family member:

[26] While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal properly stops short of entering into an analysis of the landlord's various options: Ontario Rental Housing Tribunal Interpretation Guidelines (*Eviction for Personal Use*), at p. 3.

[27] Once a landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s. 51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s. 51(1) standard.

7. Finally, the Board can consider the conduct and motives of the Landlord in order to draw inferences as to whether the Landlord desires, in good faith, to occupy the rental unit: *Fava v. Harrison*, 2014 ONSC 3352.

The Evidence

8. Turning to the facts of the case,
9. 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.
10. The Landlord has gone through 8 surgeries, including amputation of the right leg and bowel surgery.
11. She wears a prosthetic.
12. She was on life support for 8 weeks.

13. She had surgery to save her left leg.
14. She relies on a wheel chair, but can manage with a prosthetic.
15. She is in the process of upgrading the prosthetic.
16. The issue here is the distance she needs to travel from her home in Oshawa to Peterborough Hospital for her treatments, where her physician and rehab people are located. Living in Havelock (the location of the rental unit) would be more convenient. It is ½ the distance when the weather is poor, or takes 2- 3 hours on the highway 115, vs 1 hour from Havelock.
17. The Tenant has been in the unit for 6 years. Prior to that, he owned the unit.
18. The reason why he believes the eviction is in bad faith is because during covid, the next door unit became available. The Landlord asked the Tenant to take on the heat and hydro bills with a 60% increase in his rent. The Tenant offered to pay more rent, offering \$1,300 instead of his rent of \$1,075.
19. But this never materialised. He never did pay the higher rent.
20. Then, the Tenant testified he received the N12, the same date the neighbor next door moved in. The previous tenant of the adjoining unit left of his own accord. One of the reasons the previous tenant left was that he was going through a divorce and was struggling with the bills.
21. The Tenant made much of a text message, from the Landlord to him, in relation to the adjoining unit, before its tenant moved out, in which she said: *"It is constant and perpetual he pays what he wants and when he wants. Well up to now we have been the respectful landlord. He has no idea what he's in for when dave takes over discussions/collections. And worst case I move in next year."*
22. The Tenant drew the inference that she was using the same tactic on him, namely, evicting him and moving in, as she might have done to the previous tenant.
23. But the reality is she never served an N12 on the previous tenant.
24. Nor did she have him evicted.
25. He moved out on his own.
26. Furthermore, he was a problematic tenant who appears not to have paid rent faithfully.
27. It was therefore hardly surprising that she wanted him out.
28. The Tenant concludes that the Landlord wants to evict him so she can increase the rent. His unit has two bedrooms, whereas the adjoining unit has one, so by re-renting his unit, the Landlord would receive a higher rent.
29. And yet, the Tenant offered to pay the Landlord a higher rent, but she did not accept it. If mere financial gain was her motivation, why would she turn down the additional rent?
30. Further, aside from the one text message, the Tenant was not a party to the discussions between the previous tenant next door, and the Landlord. For this reason, the text lacks any sense of the context in which in which those comments were made.

31. In my view, the Landlord has suffered greatly from multiple surgeries.
32. Her caregivers are in Peterborough.
33. She is entitled to be treated where she wants by whom she wants.
34. Her home is hers, and if she wishes to be there, closer to her caregivers, that is per her prerogative.
35. As noted above, the Landlord does not have to demonstrate that living in Oshawa is the best option for her, but only that she has a genuine intention to occupy the unit for at least one year.
36. The Tenant also relies on a weak inference that the Landlord is acting on an implied threat she made regarding the previous tenant of the adjoining tenant.
37. I am not prepared to draw such an inference from a mere veiled threat which was never acted on.
38. I find that the Landlord requires the unit in good faith for residential occupation for herself, and that she has proven this on a balance of probabilities.
39. The Landlord incurred costs of \$186.00 for filing the application. However, the fee is rarely awarded on these applications and I see now reason to depart from that practice.
40. The Landlord collected a rent deposit of \$960.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$14.61 is owing to the Tenant for the period from March 5, 2017 to the hearing date.
41. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

42. 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.
43. This application was brought on 18 December 2023.
44. The Tenant has had 3 months to make other arrangements.
45. On the Landlord's side, she has already had to miss a treatment and I find it would be unfair to delay further.

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 April 10, 2024.
2. If the unit is not vacated on or before April 10, 2024, then starting April 11, 2024, 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 April 11, 2024.
4. The LMR Deposit shall be applied to the Last month's rent.
5. The Landlord owes the Tenant interest on the LMR, to February 20, 2024 in the amount of \$114.61.
6. The total amount the Landlord owes the Tenant is \$114.61.
7. If the Landlord does not pay the Tenant the full amount owing on or before April 10, 2024, the Landlord will start to owe interest. This will be simple interest calculated from April 11, 2024 at 7.00% annually on the balance outstanding.

April 3, 2024
Date Issued

James W. Campbell

James Campbell
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 October 11, 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.