



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

Citation: Dowdall v Oake, 2022 ONLTB 7757

Date: 2022-10-07

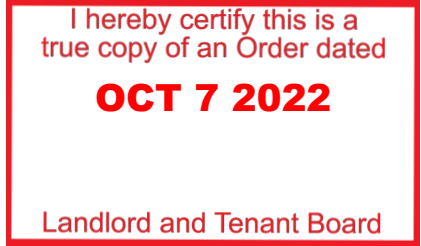
File Number: LTB-L-006940-22

In the matter of: Upper-101 Queen Street
Lindsay, ON K9V 1G7

Between: Kevin Dowdall

And

Alex Quigley
April Quigley
Greg 'Kemp' Oake



Landlord

Tenants

Kevin Dowdall (the 'Landlord') applied for an order to terminate the tenancy and evict Alex Quigley, April Quigley and Greg 'Kemp' Oake (the 'Tenants') 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 September 6, 2022.

The Landlord attended the hearing with his Legal Representative, Nadine Little. The Tenants April Quigley ('AQ') and Greg "Kemp" Oake attended on behalf of the Tenants. The Tenants spoke with Tenants 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 Tenants will be evicted.
2. At the outset of the hearing, AQ made a preliminary motion to dismiss the application on the basis that the Landlord failed to pay the Tenants compensation in the amount equal to one month's rent prior to the termination date of April 30, 2022 as required under s. 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
3. AQ testified that a cheque for the required amount was provided prior to the hearing date however, the cheque was destroyed by a leak in the Tenants' fridge. The Tenants requested a new cheque and the Landlord had requested that the Tenants set up online banking in order to repay the compensation, which AQ testified occurred.
4. As such, as I was satisfied that the Tenants were paid the compensation as required prior to the termination date, the Tenants motion to dismiss the application was denied.

5. The Tenants were in possession of the rental unit on the date the application was filed.
6. On February 2, 2022, the Landlord gave the Tenants an N12 notice of termination deemed served that same date with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for himself.
7. The Landlord testified that he plans to sell his current residence and to move into the unit as a retirement residence for a period of at least one year. As of the date of the hearing, the Landlord had yet to list his current residence for sale.
8. AQ took issue with the fact that the Landlord also testified that his wife will also move into the unit and never listed her as a prospective tenant in the N12 notice. The Landlord testified that he hopes to also have his wife move in. I make no negative inference of the Landlord for not listing his wife as a prospective tenant in the notice as it appears as though the status of their relationship was in question as of the date of the hearing.
9. AQ testified that she believes the Tenants are being evicted in bad faith as the Landlord in the past attempted to raise their rent above the annually approved guideline. AQ also testified that she started to withhold rent once she received the N12 until she received legal advice.
10. AQ testified that the Landlord currently lives in a large home and also owns a business in his home. AQ also takes issue with a reference letter the Landlord provided the Tenants to assist them in finding a new rental unit. AQ testified that she felt the reference was not good enough to help the Tenants find a new unit.
11. The reference letter was read into the record which stated, "*...the Tenants have rented from me since the fall of 2015. Rent was usually paid a day or so ahead of the first day of the month*". While not detailed, the letter is seemingly positive. AQ testified in cross-examination that she did not provide any prospective landlords the Landlord's information in an effort to find a new rental unit.
12. AQ submitted that without the compensation and the reference letter that was provided by the Landlord that the Tenants will not be able to find a new rental unit. As of the date of the hearing, the Tenants were in possession of both of those items however, they have yet to find a new rental unit and had only viewed five as of the date of the hearing.
13. AQ testified that the market in Kawartha Lakes is very competitive and that the rent for a 3-bedroom unit is quite high compared to the rent they are currently paying.
14. AQ also testified that both herself and her husband have multiple health issues and submitted ODPS statements in support of this evidence, as well as their income.
15. I find on a balance of probabilities that 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.
16. The Landlord has compensated the Tenants an amount equal to one month's rent by April 30, 2022.
17. The Tenants were required to pay the Landlord \$4,721.94 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to September 6, 2022.

18. Based on the Monthly rent, the daily compensation is \$36.99. This amount is calculated as follows: \$1,125.00 x 12, divided by 365 days.
19. There is no last month's rent deposit.
20. AQ's evidence with respect to their current health issues was compelling and uncontested and as such, I find on a balance of probabilities that the Tenants will have to overcome a number of issues in finding a new rental unit.
21. Further, while the Landlord would like the unit for his retirement residence, he has yet to even list his house for sale. As well, the Landlord testified that he is currently renting part of his residence to students and provided minimal evidence with respect to the status of those tenancies other than he hopes the purchaser of his home will want to keep his current tenants as additional income.
22. On a balance of probabilities, I do not find that the Landlord has a real sense of urgency about moving into the unit and as such the eviction will be delayed in order for the Tenants to plan to find a new rental unit.
23. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

24. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 30, 2023.
25. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
26. 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 May 1, 2023.
27. The Tenants shall pay to the Landlord \$4,721.94, which represents compensation for the use of the unit from to September 6, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
28. The Tenants shall also pay the Landlord compensation of \$36.99 per day for the use of the unit starting September 7, 2022 until the date the Tenant moves out of the unit.
29. The total amount the Tenants owe the Landlord is \$4,721.94.
30. If the Tenants do not pay the Landlord the full amount owing on or before April 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from May 1, 2023 at 4.00% annually on the balance outstanding.

October 7, 2022
Date Issued



Jagger Benham
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 November 1, 2023 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.