



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

Citation: LAKFARD v CLARKE, 2022 ONLTB 11479

Date: 2022-11-22

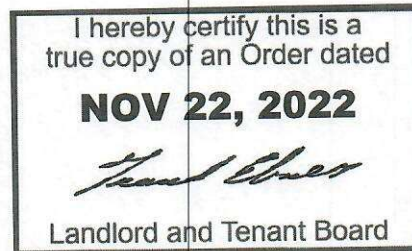
File Number: LTB-L-019893-22

In the matter of: MAIN FLOOR
28 MEDHURST ROAD
EAST YORK ONTARIO
M4B1B1

Between: KOUROSH LAKFARD

And

HARRY JAMES CLARKE
JAY H. THOMPSON



Landlord

Tenants

KOUROSH LAKFARD (the 'Landlord') applied for an order to terminate the tenancy and evict HARRY JAMES CLARKE and JAY H. THOMPSON (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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on November 3, 2022. The Landlord and the Landlord's representative, Charlene Lewin, attended the hearing. As of 9:43 am, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 and the Tenants must move out of the rental unit on or before December 3, 2022. The Tenants shall pay to the Landlord \$17,694.36, which represents compensation for the use of the unit from February 1, 2022 to November 3, 2022.
2. On November 10, 2021, the Landlord gave the Tenant an N12 Notice of Termination (N12) deemed served on November 15, 2021 with the termination date of January 31, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of his own residential occupation. The Landlord applied to the Board to terminate this tenancy on November 23, 2021.

3. The Landlord's representative submitted that this is a month-to-month tenancy with a monthly rent of \$1950.00 paid on the first day of each month, and that the Tenants remain in possession of the rental unit.

Compensation

4. Section 48.1 of the *Residential Tenancies Act, 2006* (the "Act") requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.
5. The Landlord testified that the one month's rent compensation was paid to the Tenants by waiving the rent for the month of November 2021. The Landlord submitted a letter from his legal representative to the Tenants, dated November 10, 2021, advising the Tenants of this compensation. The Landlord stated that the Tenants did not pay rent for the month of November 2021.
6. On the basis of the Landlord's uncontested evidence, I am satisfied that the Landlord paid the Tenants compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act by waiving the rent for the month of November 2021.

Good Faith

7. The N12 was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlords must establish that at the time of the service of the N12 the Landlords required, in good faith, the unit for residential use.
8. 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 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.
9. 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.
10. The Landlord testified that he has not, within two years prior to filing this application, given another notice under s. 48, 49 or 50 of the Act in respect to the same or a different rental unit.

11. The Landlord testified further that he purchased the rental unit on August 1, 2021, with the goal of moving into the unit. The Landlord explained that he currently lives with his sister, and is imposing on her until he can move into the rental unit. The Landlord noted that the rental unit is closer to his parents' home than his current residence, and this closer proximity will allow him to assist them more.
12. Pursuant to s. 72(1)(a) of the Act, the Landlord provided a signed declaration, dated November 6, 2021, declaring his good faith intention to reside in the rental unit for his own personal use for a period of not less than one year.
13. On the basis of the Landlord's uncontested evidence, I am satisfied that the Landlord genuinely intends to use the rental unit for his own personal residence for at least one year. I therefore find that 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.

Daily Compensation, Rent Deposit, and Legal Costs

14. The Landlord testified that the Tenants have not paid rent from the N12 termination date of January 31, 2022 to the day of this hearing. The Landlord testified further that the Tenants have rent arrears starting from October 15, 2021, and these arrears are the subject of an L1 application that was filed with the Board on October 1, 2022.
15. On the basis of the Landlord's uncontested evidence, I find that the Tenants are required to pay the Landlord \$17,694.36 in daily compensation for the use and occupation of the rental unit from February 1, 2022 to November 3, 2022 – a period of 276 days.
16. Based on the monthly rent, the daily compensation is \$64.11. This amount is calculated as follows: $\$1,950.00 \times 12$, divided by 365 days.
17. The Landlord testified that he currently does not hold a rent deposit from the Tenants.
18. The Landlord requested compensation from the Tenants of \$700.00 for legal costs for attending today's hearing.
19. The Board may award legal costs to a landlord if a tenant's conduct is unreasonable causing undue delays. In this matter, it is unknown why the Tenants failed to attend the hearing; however, the Tenants' absence did not delay the hearing for the Landlord's application. The Landlord did not provide any evidence of unreasonable Tenant conduct. Therefore, the Landlord's request for compensation of legal costs in relation to the Landlord's application is denied.

Relief from Eviction

20. 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.

21. The Landlord was not aware of any circumstances that should be considered in a determination of whether to provide the Tenants with eviction relief, nor were the Tenants or their representative present at the hearing to provide submissions with respect to the Tenants' relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenants with eviction relief.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 3, 2022.
2. If the unit is not vacated on or before December 3, 2022, then starting December 4, 2022, 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 December 4, 2022.
4. The Tenants shall pay to the Landlord \$17,694.36, which represents compensation for the use of the unit from February 1, 2022 to November 3, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenants shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting November 4, 2022 until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before December 3, 2022, the Tenants will start to owe interest. This will be simple interest calculated from December 4, 2022 at 4.00% annually on the balance outstanding.

November 22, 2022
Date Issued



Frank Ebner
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 June 4, 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.