



**Order under Section 69 / 88.2  
Residential Tenancies Act, 2006**

**Citation:** Sutandy Hall v Tracey Hamilton, 2023 ONLTB 40411

**Date:** 2023-06-01

**File Number:** LTB-L-068387-22

**In the matter of:** 147 PLEASANT AVE  
ST CATHARINES ON L2R1Y3

**Between:** Michael Hall  
Sutandy Hall

**And**  
Tracey Hamilton



Landlords

Tenant

Michael Hall and Sutandy Hall (the 'Landlords') applied for an order to terminate the tenancy and evict Tracey Hamilton (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 Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

The Landlords also applied for an order requiring the Tenant to pay the Landlords' reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on May 2, 2023.

The Landlords and the Tenant attended the hearing. The Landlords' Legal Representative J. Thombs was also present. The Tenant spoke with Tenant Duty Counsel before the hearing.

**Determinations:**

1. The Tenant stated at the start of the hearing that the other two tenants named on the application are her children who have moved out of the rental unit. The parties agreed to remove Atray Johnson Shalo Johnson as tenants from the application since they do not reside at the rental unit.
2. The Landlord also amended the application to correct the amount of utilities cost that remain unpaid by the Tenant. The amount claimed is \$1,454.61.
3. As explained below, the Landlords has proven on a balance of probabilities that the Landlords 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. Therefore, the tenancy is terminated as of June 15, 2023.

4. The Tenant was in possession of the rental unit on the date the application was filed.

*Landlord's own use*

5. On November 1, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served the same day with the termination date of December 31, 2022. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
6. The Landlord SH testified that they both work from home and they would like to move into their own property instead of renting now that they do not have to go into the office everyday. The financial stress of renting and paying their mortgage has also been causing an additional strain on them.

*Analysis*

7. In the leading case law involving a Landlords's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

“the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal...”

8. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are “largely irrelevant”.
9. I find that the Landlords gave the N12 in good faith and genuinely intend to move into the rental unit and live there for at least once year once its vacated. While the Landlord's motives are largely irrelevant, I find that the Landlords intend to move into the unit because they are struggling financially with two payments – their rent and the mortgage on the rental unit.

*Compensation*

10. The Landlords has compensated the Tenant an amount equal to one month's rent by waiving the rent owing for December 2022. The Tenant stated that she was not compensated but the Landlord's Legal Representative stated that when she spoke with the Tenant, she told her that the Landlords will be adjusting her rent arrears with one month's rent as compensation.
11. The Tenant was required to pay the Landlords \$8,382.74 in daily compensation for use and occupation of the rental unit for the period from January 1, 2023 to May 2, 2023 after the termination date on the notice.
12. Based on the Monthly rent, the daily compensation is \$69.04. This amount is calculated as follows: \$2,100.00 x 12, divided by 365 days.

13. The Landlords collected a rent deposit of \$2,100.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$43.04 is owing to the Tenant for the period from December 30, 2021 to May 2, 2023.
14. 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.

*Out-of-pocket expenses for utilities*

15. The Tenant failed to pay water costs that they were required to pay under the terms of the tenancy agreement.
16. The Landlords has incurred reasonable out-of-pocket expenses of \$1,454.61 as a result of the Tenant's failure to pay water costs. The Tenant failed to pay the water bill which has been added to the property tax of the Landlords.
17. The Tenant stated that she has been paying towards utility bills every month so they should be lower, but she has not been able to submit any supporting evidence as she does not have access to internet. I gave her the option to go to a library to send the evidence, but she declined as she stated that she was unwell.
18. In the absence of any evidence to support her claim that she has made additional payments to the arrears, I accept the Landlords' evidence about the outstanding amount owing for water bill.


*Relief from eviction*

19. 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 June 15, 2023 pursuant to subsection 83(1)(b) of the Act.
20. The Tenant testified that she is an ODSP recipient and since both her children have moved out, she is finding it difficult to find a suitable accommodation in her budget. She only gets \$849.00 per month and has been unemployed since September 2022. She requested the Board to grant her forty-five days to find another place to move to.
21. The Landlords' Legal Representative objected to the requested delay because the Tenant has not been paying rent since August 2022 and the Board must consider the prejudice to the Landlords as well.
22. The Landlords are in a lot of financial duress because the Tenant is not paying rent while they are continuing to pay the mortgage at the rental unit and also pay rent at their current residence. The Landlords have been served with a legal notice from their bank about the outstanding mortgage arrears.
23. Based on the totality of evidence and the amount of time it has taken to issue the order, it is fair that the tenancy ends on June 15, 2023.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 15, 2023.
2. If the unit is not vacated on or before June 15, 2023, then starting June 16, 2023, the Landlords 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 Landlords on or after June 16, 2023.
4. The Tenant shall pay to the Landlords \$6,239.70, which represents compensation for the use of the unit from February 1, 2023 to May 2, 2023, less the rent deposit and interest the Landlords owes on the rent deposit.
5. The Tenant shall also pay the Landlords compensation of \$69.04 per day for the use of the unit starting May 3, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlords \$1,454.61, which represents the reasonable out-of-pocket expenses the Landlords has incurred or will incur as a result of the unpaid utility costs.
7. The total amount the Tenant must pay to the Landlords is \$7,694.31.
8. If the Tenant does not pay the Landlords the full amount owing on or before June 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 16, 2023 at 6.00% annually on the balance outstanding.

**June 1, 2023**  
**Date Issued**

  
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Sheena Brar  
Member, Landlords 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 December 16, 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.