



OCT 5 2022

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

Citation: Haarlammert v McKay, 2022 ONLTB 8098

Date: 2022-10-05

File Number: LTB-L-027535-22

In the matter of: Main Floor, 6465 LESKARD RD
Orono ON L0B1M0

Between: Bonnie Margaret Reynolds, Erica Dawn Haarlammert Landlords

And

Darryl McKay, David McKay, Frank McKay Tenants

Bonnie Margaret Reynolds ('BR'), Erica Dawn Haarlammert ('EH', the 'Landlords') applied for an order to terminate the tenancy and evict Darryl McKay ('D'), David McKay ('DM2') and Frank McKay ('FM', the 'Tenants') because:

- the Tenants, another occupant of the rental unit or someone the Tenants permitted in the building has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord in a building that has three or fewer residential units and the Landlord resides in the building; and
- 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 August 16, 2022.

The Landlord DH and the Tenants DM1 and DM2 attended the hearing.

Determinations:

1. As explained below, the Landlord EH has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlords' application to terminate the tenancy is granted. The eviction date, however, shall be postponed until November 30, 2022.
2. The Landlord BR was the Landlord EH's mother. BR passed away before the hearing was held. BR and EH purchased the property in November 2021. EH occupies the basement of the property with her minor child. The Tenants occupy the above-ground (or main) level of the property with their father and DM2's children.
3. EH testified that the Landlords purchased the property with the intent to occupy it as a single-family residence. EH explained that the above-ground level would be used as

sleeping and living space and that she would operate a hairdressing business in the basement.

4. The Landlords did not understand when purchasing the property that the Tenants' tenancy could only be terminated in accordance with the *Residential Tenancies Act, 2006* (the 'Act'). The Landlords did not understand that purchasing a property with the intent to reside in it does not result in an automatic termination of a tenant's tenancy at the property. It was apparent from EH's description of her activities and beliefs that the Landlords were unfamiliar with their rights and obligations under the Act when they became the Tenants' landlords after purchasing the property.
5. At the hearing, EH testified that she and her child continue to intend using the residential complex for their own personal use as a single-family dwelling, with a permissible home-based business operating from the basement. EH introduced reliable documentary evidence to show that the Landlords waived \$1,400.00 of rent arrears in a letter dated March 13, 2022. The Tenant DM1 confirmed that the Tenants are required to pay \$1,300.00 a month in rent, which amount is payable in two installments of \$650.00 in each month.
6. The Tenants did not cross-examine EH's evidence that she intends to occupy the residential complex with her child as a single-family residence. The Tenants did not dispute the Landlords' evidence, that the Landlords waived \$1,400.00 in rent arrears before the May 31, 2022 eviction date in the Landlords' eviction notice.
7. I find from the evidence that the Landlord EH in good faith requires vacant possession of the rental unit for residential occupation. I also find that the Landlords compensated the Tenants in an amount greater than one month's rent, by waiving the Tenants' obligation to pay \$1,400.00 of the rent arrears they owe. The Board's application record confirms that EH filed a declaration with the Board that meets the Act's requirements.
8. At the hearing, EH introduced video evidence showing that the Tenants DM1 and DM2 have substantially interfered with EH's and her household's reasonable enjoyment of the residential complex. The video recordings, including two from March 17, 2022, show the Tenants at the property screaming obscenities at the Landlord and local police who attended to investigate noise complaints. In addition to screaming, the March 17, 2022 videos show the Tenants inspect and photograph the interior of the Landlord's vehicle, and also climb onto the Landlord's vehicle for the purpose of tampering with a security camera. The Landlord also adduced documentary evidence of an unwelcome text message from DM2 that commented on the Landlord's physical appearance.
9. The Tenants DM1 and DM2 did not dispute the Landlord's video or documentary evidence. The Tenants, however, testified that the Landlord EH has harassed and interfered with them and their household's reasonable enjoyment of their rental unit and the residential complex. The Tenants gave evidence of their belief that the Landlord has complained without good cause to the local police about their activities. The Tenants also testified that the Landlord and another person entered the Tenants' rental unit illegally on March 25, 2022.
10. The Landlord EH agreed that she entered the Tenants' rental unit, without proper notice, on March 25, 2022. EH explained that she observed water enter her basement residential unit from a ceiling vent and believed the Tenants were trying to provoke a response from

her. EH based her belief on previous experience. EH entered the Tenants' rental unit with a friend to confront the Tenants and demand they cease their activities.

11. Based on the Landlord's description of events, I find that, contrary to her assertion at the hearing, she did not believe that there was an emergency involving a flood or leak on March 25, 2022. Rather, the Landlord concluded from previous experience that the Tenants were purposefully interfering with her reasonable enjoyment of the property. The Landlord entered the rental unit to stop the interfering behaviour; not to address an emergency.
12. The Landlord was therefore not entitled to enter the rental unit without notice under subsection 26(1)(a) of the Act. I accordingly agree with the Tenants, that EH entered the rental unit illegally on March 25, 2022.
13. However, I also find that EH proved, on a balance of probabilities, that the Tenants substantially interfered with her reasonable enjoyment of the residential complex. Although it is apparent that the Tenants and Landlord do not get along, the Tenants' actions were neither appropriate nor reasonable in the circumstances. Indeed, the evidence shows that the Tenant DM2 was charged with offences related to his interfering behaviour at the residential complex.
14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until November 30, 2022 pursuant to subsection 83(1)(b) of the Act.
15. The Tenants introduced evidence that their household includes their 82-year-old father and DM2's two minor children. DM1 testified that he has been searching for alternate accommodations, but has been unsuccessful. DM1 explained that the Tenants require additional time to find accommodations suitable for their five-person household.
16. The Landlord EH gave evidence that she had anticipated occupying the entire property in November 2021, and that she and her child have experienced hardship while residing in the property's basement.
17. I find in the circumstances that it is not unfair to postpone the eviction date until November 30, 2022. This will give the Tenants time to find new accommodations. In arriving at this conclusion, I considered not only the age of the Tenants' father and of DM2's children, I also considered the Landlord's illegal entry into the rental unit on March 25, 2022. I also considered the Landlord's admission that she removed doors and window coverings from the Tenants' rental unit without replacing them. The Landlord explained that she was waiting for the Tenants to vacate the rental unit to upgrade those fixtures.

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 November 30, 2022.
2. If the unit is not vacated on or before November 30, 2022, then starting December 1, 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 1, 2022.
4. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
5. The total amount the Tenant owes the Landlord is \$186.00.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2022, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2022 at 4.00% annually on the balance outstanding.



October 5, 2022
Date Issued

Harry Cho
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 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.