



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-20854-21

In the matter of: 2, 111 OAKWOOD STREET
PORT COLBORNE ON L3K5G4

Between: Kevin Brady Landlords
Carol Brady

And

Leslie Marshall
Paul Marshall



Tenants

Kevin Brady and Carol Brady (the 'Landlords') applied for an order to terminate the tenancy and evict Leslie Marshall and Paul Marshall (the 'Tenants') because the Landlords require possession of the rental unit for the purpose of residential occupation. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This hearing was held by videoconference on September 1, 2021. One Landlord, Carol Brady, and the Landlord's representative, Julian Renaud, attended the hearing. One Tenant, Leslie Marshall, and the Tenant's representative, Josh McDougal, also attended the hearing.

At the start of the hearing the Landlord advised that she no longer seeks compensation for each day the Tenants remained in the unit after the termination date.

Determinations:

1. On March 16, 2021 the Landlords served the Tenants with an N12 Notice of Termination (N12) with a termination date of May 31, 2021. The N12 seeks termination of the tenancy on the ground that the Landlords requires the rental unit for residential occupation.

Good faith

2. The N12 was served pursuant to section 48 of the Residential Tenancies Act, 2006 (Act). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.
3. 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."

4. 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."
5. The Landlord testified that her mother, Lois Mae George, will be moving into unit 2 at 111 Oakwood Street in Port Colborne for at least one year. The Landlord stated that she resides in another unit beside the rental unit, but in the same semi-detached building. The Landlord also provided a signed declaration from her mother dated March 10, 2021 that she in good faith will occupy the residence for a minimum of one year. The Landlord also noted that the current Tenant has resided in the rental unit for four years – since 2017.
6. Ms. George testified at the hearing that she is currently living in a motel waiting to move into the rental unit. She noted further that the motel costs are more expensive than she can afford, and as a result may have to move in temporarily with her daughter, the Landlord; however, her daughter has limited space in her residence. Ms. George testified further that at 82 years of age she has multiple health issues, and as a result of a hip replacement, she now requires assistance walking. She added that her doctor, in a note dated September 9, 2020, recommended that she live close to her daughter for assistance. However, Ms. George did not present this note as documentary evidence; therefore, her comments regarding the doctor's recommendations are hearsay, and accorded little weight in the formulation of a determination. The rental unit is beside her daughter's residence.
7. The Tenant testified that she did not believe that the Landlord's mother in good faith intended to occupy the rental unit on two grounds. First, she noted that the Landlord filed an N12 notice of termination for the previous Tenants of the rental unit who occupied the unit before her, prior to 2017. She testified further that based on this N12, the Landlord received an order to evict the previous Tenant, on the premise that her mother intended to reside in the unit; however, the mother never moved into the unit. Ms. Debbie Booker, the previous Tenant of the rental unit prior to 2017, testified at the hearing, and confirmed the Tenant's testimony; however, she did not provide any documentary evidence of the previous N12 or the resulting eviction order.
8. The Landlord did not refute Ms. Debbie Booker's testimony; however, she responded that during the previous tenancy, prior to 2017, and the associated N12, her mother's housing requirements had changed resulting in her mother not moving into the rental unit at that time. She testified that currently, four years later, her mother's health has deteriorated further and that her current requirement for care and assistance would not alter.
9. Second, the Tenant testified that the Landlord's mother owns a residence in Florida and appears healthy enough to reside in this unit each year for a period of several months with a partner who assists her. The Tenant noted that given this residence option for the

Landlord's mother, her requirement and sincere intention to reside in the rental unit for at least a year should be questioned. Ms. George responded that as a result of her declining health, she will no longer be spending winters in Florida, and that her son-in-law will be assuming ownership of her Florida property.

10. I find that during the previous tenancy for this rental unit, prior to 2017, it appears, the service of the N12 was more than four years ago. Moreover, the Landlord explained that she initially acted in good faith in serving the previous Tenant an N12. However, the mother's circumstances changed. The changed circumstances of the Landlord's mother four years ago do not persuade me that the current N12 is served in bad faith. That is, while I have considered the service of a previous N12, given the passage of time and the evidence supporting the service of the current N12, I find this N12 is served in good faith. On the basis of the current tenancy, and the Landlord's evidence of her mother's current declining health status, and her requirement for living assistance, I am satisfied that Ms. George genuinely intends to move into the rental unit for at least one year. I find that the Landlord's mother in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.

Compensation

11. Section 48.1 of 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.
12. The Landlord testified that one month's rent compensation in the amount of \$675.00 was provided to the Tenants via cheque before May 31, 2021. The Tenant confirmed receipt of this payment.
13. I am satisfied that the Landlord met her obligation to pay the Tenant compensation equal to one month's rent in accordance with section 48.1 of the Act.

Relief from Eviction

14. 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 November 15, 2021 pursuant to subsection 83(1)(b) of the Act.
15. The Tenant testified that her husband has had heart bypass surgery and recently suffered a stroke. He is convalescing at home in the rental unit, and he is starting to stand, but he is not yet able to walk or to take care of himself. While caring for her husband, she has looked for alternate rental units, but rental unit vacancies are limited and expensive. The Tenant noted that she would experience financial hardship if evicted as a result of the increased rental rates.

16. I find that, although the Landlord in good faith requires possession of her rental unit for the residential occupation of her mother, postponing the Tenants' eviction until November 15, 2021 will provide the Tenants with more time to secure a rental unit given the mobility and medical restrictions of Paul Marshall. I find that this postponement would not be unfair to the Landlord or the Landlord's mother who is able to temporarily live with her daughter at limited expense.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 15, 2021.
2. If the unit is not vacated on or before November 15, 2021, then starting November 16, 2021, 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 November 16, 2021.

September 21, 2021
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

Southern-RO
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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 expires on May 16, 2022 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.