

Hershey v Thompson, 2021 CanLII 139266 (ON LTB)

Date: 2021-10-19
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Tribunals Ontario
Landlord and Tenant Board

Order under Section 69

Residential Tenancies Act, 2006

File Number: SOL-22694-21

In the matter of: 31021 SIDEROAD 5 ROADCLIFFORD ON N0G1M0

Between: Dale Hershey Joan Hershey Landlords

and

Ashley Thompson Kris Vandonkersgoed Tenants

Dale Hershey and Joan Hershey (the 'Landlords') applied for an order to terminate the tenancy and evict Ashley Thompson and Kris Vandonkersgoed (the 'Tenants') because the Landlords entered into an agreement of purchase and sale of the rental unit and the purchaser requires possession of the rental unit for the purpose of residential occupation.

This hearing was held by videoconference on September 29, 2021. The Landlords were present at the hearing and one Tenant, Ashley Thompson, was also present at the hearing.

Determinations:

1. On June 21, 2021, the Landlords served the Tenants with an N12 Notice of Termination (N12) with a termination date of September 7, 2021. Rent for this month to month tenancy is paid the 8th of every month; therefore, the N12 date of termination of September 7, 2021 is in accordance with section 49(3) the *Residential Tenancies Act, 2006* (the "Act"). The N12 seeks termination of the tenancy on the ground that the Landlords entered into an Agreement of

Purchase and Sale of the rental unit with the purchasers, Neil Ward and Sherilyn Ward, who require possession of the rental unit for the purpose of residential occupation for their daughter Selina Ward.

Good faith

2. The N12 was served pursuant to section 49 of the Act. Section 49(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, the purchaser 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 Landlords testified, and provided a signed declaration dated September 9, 2021, from the purchasers' daughter, Selina Ward, that she requires the rental unit at 31021 Sideroad 5 Road in Clifford for her own residential use. The Landlords further testified that the Agreement of Purchase and Sale (APS) for the rental unit was signed on June 18, 2021 with the purchasers; however, the closing date of September 8, 2021 in the APS has been extended pending the Tenants vacating the rental unit.

6. The Tenant testified that she has no reason to believe that the purchasers' daughter will not move into the rental unit for her own residential occupation. The Tenant did not offer any testimony or documentary evidence to challenge the purchasers' intention to use the rental unit for the residential occupation of their daughter – Selina Ward.

7. I find that, based on the Landlord's evidence, the purchasers genuinely intend to use the rental unit for the residential occupation of their daughter. I find that the purchasers' daughter, Selina Ward, in good faith requires possession of the rental unit for her own personal residence.

Compensation

8. Section 49.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the purchaser, 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 49.1 of the Act.

9. The Landlords testified that rent for the month of August 2021 was waived for payment by the Tenants to satisfy the compensation requirements of the N12. The Tenant confirmed that this compensation was provided before the N12 date of termination.

10. I am satisfied that the Landlords met their obligation to pay the Tenants compensation equal to one month's rent in accordance with section 49.1 of the Act.

Relief from Eviction

11. 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 30, 2021 pursuant to subsection 83(1)(b) of the Act.

12. The Tenant testified that she has two young children, an 18-month old and a two-year old, she is currently unemployed, and her partner, the second Tenant, has abandoned her. She added that she is actively looking for alternate accommodation, including with Ontario Housing, but with a young family and financial constraints it is very difficult to find another affordable rental unit.

13. I find that, although the purchasers in good faith require possession of the rental unit for their daughter's residential occupation, postponing the Tenants' eviction until November 30, 2021 will provide Ashley Thompson, who is a single mother struggling financially, with more time to secure a rental unit that is suitable given her financial constraints. I find that this modest postponement would not be unfair to the Landlord or the purchasers.

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 30, 2021.
2. If the unit is not vacated on or before November 30, 2021, then starting December 1, 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 Landlords on or after December 1, 2021.

October 19, 2021



Date Issued

Frank Ebner

Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor Hamilton ON
L8P4Y7

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 June 1, 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.