



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-56444-21

In the matter of: B, 758 BLEAMS ROAD
KITCHENER ON N2E2E6

Between: Helena Ball

and

Juanita Tomarelli (Tomarelli)
Sherrie Gosse

I hereby certify this is a
true copy of an Order dated

Jan 13, 2022

MS

Landlord and Tenant Board

Landlord

Tenants

Helena Ball (the 'Landlord') applied for an order to terminate the tenancy and evict Sherrie Gosse and Juanita Tomarelli (Tomarelli) (the 'Tenants') because the Landlord has 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. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This hearing was held by videoconference on December 20, 2021. The Landlord was not present at the hearing; however her representative, Jordan Nieuhof, attended the hearing. As of 2:26 pm the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

1. On August 31, 2021, the Landlord served the Tenants with an N12 Notice of Termination (N12) with a termination date of October 31, 2021. The N12 seeks termination of the tenancy on the ground that the purchaser of the rental unit requires the unit for residential occupation.
2. The Landlord applied to the Board to terminate this tenancy on September 22, 2021. The Landlord has not, within two years prior to filing this application, given any other notice under section 48, 49 or 50 of the *Residential Tenancies Act, 2006* (the "Act") in respect of the same or a different rental unit.

Good faith

3. 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, in good faith, required the unit for residential use.

4. 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."
5. 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."
6. The Landlord's representative submitted that the purchaser, Paul Mauer, will be moving into unit B at 758 Bleams Road in Kitchener for his own residential occupation. The Landlord provided a signed declaration from the purchaser dated August 14, 2021, pursuant to s. 71.1 of the Act. In the declaration the purchaser states that he requires the rental unit, in good faith, for his primary residence when the purchase is complete on December 1, 2021.
7. The Landlord's representative also submitted that the Agreement of Purchase and Sale for the rental unit, signed September 2, 2021, remains active and in force despite the original completion date of December 1, 2021 having already passed.
8. On the basis of the Landlord's uncontested evidence, I am satisfied that the purchaser genuinely intends to use the rental unit for his own primary residence. I find that the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

Compensation

9. 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.
10. The Landlord's representative submitted that the Landlord waived the requirement for the Tenants to pay rent of \$1456.00 for the month of August 2021. The Landlord's representative noted that the Landlord did not receive, nor did she expect, rent from the Tenants for the month of August 2021.
11. The Landlord's representative added that the Tenants have not paid the Landlord rent from September 1, 2021 to the date of this hearing. He acknowledged that the Landlord retains a rent deposit from the Tenants for the sum of \$1425.00 that was collected on November 15, 2018.

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

Relief from Eviction

13. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
14. The Tenants were not present at the hearing to provide testimony or documentary evidence in support of any relief from eviction. The Landlord's representative was not aware of any Tenant circumstances that should be considered to provide the Tenants with any relief from eviction.
15. In this matter, I find that it would be unfair to the Landlord to further delay the completion of the Agreement of Purchase and Sale by granting the Tenants relief from eviction.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated on January 13, 2022. The Tenants must move out of the rental unit on or before January 24, 2022.
2. The Tenants shall pay to the Landlord \$2036.24, which represents compensation for the use of the unit from November 1, 2021 to January 13, 2022, less the rent deposit of \$1425.00 and interest the Landlord owes on the rent deposit of \$81.14.
3. The Tenants shall also pay to the Landlord \$47.87 per day for compensation for the use of the unit from January 14, 2022 to the date the Tenant moves out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before January 24, 2022, the Tenants will start to owe interest. This will be simple interest calculated from January 25, 2022 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 24, 2022, then starting January 25, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 25, 2022.

January 13, 2022
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

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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 July 25, 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.