



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

Citation: Tahir v Han, 2024 ONLTB 24529

Date: 2024-04-05

File Number: LTB-L-081170-23

In the matter of: Upper/Main, 170 LAVENDER DR
ANCASTER ON L9K1B8

Between: Sanam Tahir
Zeeshan Khan

And

Yuqi Han
Zihao Chang
Roufan Wang

I hereby certify this is a
true copy of an Order dated
Apr 05, 2024
Landlord and Tenant Board

Landlords

Tenants

Sanam Tahir and Zeeshan Khan (the 'Landlords') applied for an order to terminate the tenancy and evict Yuqi Han, Zihao Chang and Roufan Wang (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 27, 2024.

The Landlords, the Landlords' legal representative Kurt Shmuir, the Tenants and the Tenants' legal representative Teresa Wang attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy shall terminate as detailed below.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The rental unit is the main floor of a single family home. The lower unit is occupied by the Landlords.
4. The tenancy began in December 2021.
5. The lawful rent is \$3,500.00 and there is no last month's rent deposit.
6. The Landlords' disclosure includes videos and various communications.

7. The Tenants' disclosure includes various communications, timeline of events and LTB forms.
8. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

N12 Notice of Termination – Landlord's Own Use

9. On September 29, 2023, the Landlords gave the Tenants an N12 notice of termination with the termination date of November 30, 2023. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords.
10. As per s.72(1) of the Act, the Landlords filed with the Board a declaration from the Landlords stating they intends to reside in the rental unit for no less than one year.
11. The Landlords have complied with s.48.1 and 55.1 of the Act by providing the Tenants with compensation equivalent to one months rent on or before the date of termination specified in the notice of termination.
12. The Landlords issued three cheques, one for each Tenant where the total rent was divided equally amongst the three Tenants. The Landlords provided tracking receipt details for each cheque. There is no dispute the Tenants have not cashed the cheques.
13. The Tenant's legal representative said the Tenants did not cash the cheques due to other issues specific to maintenance, pending hearing before the LTB.
14. I am satisfied that the Landlords have complied with their requirements for compensation. The Tenants may wish to cash the cheques as the cheques may quickly become stale dated.
15. The Landlords previously served the basement tenant with an N12 notice, the tenant vacated as a result of the notice and the Landlord moved into the basement unit.
16. At the hearing, on multiple occasions, I told the Tenants' legal representative that the Tenants' T6 application is not currently before me and pending scheduling.
17. The issue to be determined by the Board is whether the Landlords have satisfied the "good faith" requirement set out in s.48(1) of the Act which provides:

A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

- (a) the landlord;

The Landlords' Good Faith Intention

18. As explained at the hearing, the onus is on the Landlords to establish that the Landlords in good faith require the rental unit for the purpose of residential occupation.
19. In the leading case law involving a landlord'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...

20. Thus, the Landlords must establish that they genuinely intend to use the rental unit as detailed in the N12 notice. The Court also held in *Salter* that the Landlord's motives are "largely irrelevant".
21. It was the testimony of the Landlords that their previous living circumstance was not ideal. They resided with parents, have an autistic minor son and minor daughter. Due to the special needs of their autistic son, relationships with the parents became strained and they needed to move out to preserve their family. They own the residential complex and moved into the basement unit pursuant to an N12 notice to terminate the tenancy.
22. It was the evidence of the Landlords that upon moving into the basement unit, their son's health deteriorated due to the excessive noise and behaviour of the Tenants in the upper unit. The Landlords claim the Tenants are extremely loud and intentionally provoke the Landlords and their children by causing noise throughout the day and night, swear at the children and the Tenants often use "obscene gestures" toward the Landlords and their family. To support this claim, the Landlords admitted into evidence videos, capturing the Tenants' use of "obscene gestures".
23. The Landlords also take the position that when they addressed this with the Tenants, the Tenants' behaviour escalated.
24. The Landlords' evidence includes two doctors' notes dated February 13, 2023 and January 14, 2024. The medical notes detail the Landlords' son's diagnosis and the negative impact on his overall health and wellbeing as a result of the issues between the Tenants and the Landlords.
25. The Landlords' testified that they intend to occupy the entire home, living in the upper unit and using the lower unit as a play area and home office. They do not intend to rent out the lower or the upper unit.

The Tenants' Evidence

26. The Tenants' legal representative stated the Tenants do not dispute the intention of the Landlords to move into the upper unit. Rather, the Tenants take the position that the Landlords served the N12 notice around two weeks after the Tenants filed a T6 application LTB-T-075950-23 for issues related to maintenance.
27. The Tenants also claim the Landlords have attempted to raise the rent on more than one occasion and their resistance was the impetus for the N12 notice to terminate the tenancy.

28. The Tenants did not provide further specifics on other tenant applications before the Board.
29. Although the Tenants took the position that the Landlords wanted to evict them out of retaliation for the T6 application and to allow a new tenancy with higher rent, they provided no further evidence to support the proposition that the Landlords did not intent to move into the rental unit.
30. The Tenants' legal representative stated the Tenants do not object to the intention of the Landlords but question the true motivation behind the service of the N12 notice.

Analysis

31. The matter before me is whether the Landlords served the Tenants with an N12 notice in good faith and if the Landlords intend to move into the rental unit.
32. As explained at the hearing, the reasonableness of the Landlords' intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), 1992 CanLII 7625 (ON SC), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A landlord need not establish that his requirement is reasonable, only that he bona fide wanted and genuinely had the immediate intention to occupy.

33. I find therefore that the reasonableness of the Landlords' intention to move into the rental unit not relevant to the issues of intention or good faith.
34. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlords' testimony. I am therefore satisfied on a balance of probabilities that the Landlords, in good faith, require possession of the rental unit for the purpose of residential occupation and that they intend to move into the rental unit for a period of one year.

Daily Compensation

35. The Tenants were required to pay the Landlords \$13,578.26 in daily compensation for use and occupation of the rental unit for the period from December 1, 2023 to March 27, 2024.
36. Based on the Monthly rent, the daily compensation is \$115.07. This amount is calculated as follows: \$3,500.00 x 12, divided by 365 days.
37. There is no last month's rent deposit.

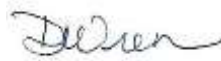
Relief from Eviction

38. I turned my mind to the circumstances of the Tenants. They said they have not looked for alternative accommodation nor have the option to live with family or friends. The Tenants requested two to three months to find alternative accommodation.
39. The Landlords opposed the delay in eviction for fear of retaliation from the Tenants which will cause further stress to the family and harm to their minor son.

40. 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.
41. Based on the party submissions, I find it reasonable to grant the Landlords' request to terminate the tenancy without further delay. In my view, the Tenants were put on notice their tenancy was in jeopardy and have taken no steps to seek alternative accommodation. I also consider the relatively short tenancy, the breakdown of the Landlord/Tenant relationship and impact on the wellbeing of the Landlords' family.
42. In arriving at this determination, I also considered s.83 (3) of the Act. I cannot make a finding that the Board must refuse to grant the application based on a serious breach of the Landlords' responsibilities of the Act. The maintenance issues relate to the garden/yard at the residential complex and do not rise to the level required to satisfy this provision of the Act. Nor do I find the allegations related to rent increases a circumstance where refusal is required.
43. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 April 15, 2023.
2. If the unit is not vacated on or before April 15, 2023, then starting April 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 April 16, 2023.
4. The Tenants shall pay to the Landlords \$13,578.26 (less any monies already paid to the Landlords), which represents compensation for the use of the unit from December 1, 2023 to March 27, 2024.
5. The total amount the Tenants owe the Landlords are \$13,578.26.
6. If the Tenants do not pay the Landlords the full amount owing on or before April 16, 2024, the Tenants will start to owe interest. This will be simple interest calculated from April 17, 2024 at 7.00% annually on the balance outstanding.
7. The Tenants shall also pay the Landlord compensation of \$115.07 per day for the use of the unit starting April 16, 2024 until the date the Tenants moves out of the unit.



April 5, 2024
Date Issued

Dana Wren
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 Tenants expires on October 17, 2024 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.