



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

Citation: Tayyab v Bailey, 2024 ONLTB 13283

Date: 2024-02-29

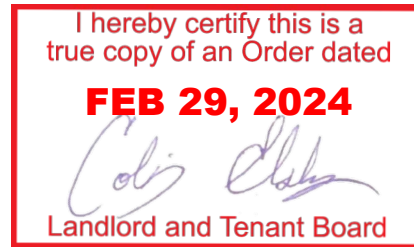
File Number: LTB-L-081448-22

In the matter of: UPPER UNIT, 831 SYLVIA ST
OSHAWA ON L1H5M5

Between: Muhammad Umair Tayyab

And

April Bailey



Landlord

Tenant

Muhammad Umair Tayyab (the 'Landlord') applied for an order to terminate the tenancy and evict April Bailey (the 'Tenant') because:

- 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 January 12, 2024.

The Landlord and their legal representative, Sarah Teal, and the Tenant attended the hearing.

Determinations:

Preliminary Issue- Video/Audio Recording

1. At the hearing the Tenant attempted to submit audiotaped/videotaped evidence of a conversation between the Landlord and his real estate agent. The Tenant alleged that this conversation would prove that the Landlord did not intend to move into the unit and occupy the unit for at least one year.
2. The Landlord and his real estate agent were on the driveway of the residential house. The Tenant had a security camera at her window of her rental unit facing the driveway and this camera was recording their conversation. The Landlord was not aware of the presence of the camera at the window, nor was the Landlord aware that the conversation could be overheard by the Tenant's camera. Neither the Landlord nor his agent consented to the recording and were not aware of it. They were entitled to believe that their conversation was private.
3. It is well established that generally all relevant evidence is admissible as part of the truth-seeking function during judicial proceedings, unless the evidence is not admissible due to some established exclusionary rule. Traditionally, out-of-court statements, made by an

individual not called as a witness, sought to be used for the truth of their contents are presumptively inadmissible, even though they may be relevant, due to concerns about their reliability.

4. However, the Statutory Powers Procedure Act (“SPPA”) applies to all proceedings before the Board and, with respect to this issue, section 15 of the SPPA provides, in part, as follows:

....a tribunal may admit as evidence at a hearing whether or not given or proven upon oath or affirmation or admissible as evidence in a court:

- a) any oral testimony and
- b) any document or other thing relevant to the subject matter of the proceeding and may act upon such evidence...”

5. In my view, in dealing with out-of-court statements tendered for the truth of their contents and where such statements meet the criterion of necessity as is the case here, before accepting and acting upon evidence, the trier-of-fact must, notwithstanding that such evidence is admissible pursuant to the SPPA, be satisfied that there is sufficient indicia of reliability because the circumstances during which out of court statements more often than not come about do not provide reasonable assurances of inherent reliability.
6. In this case the criterion of reliability has not, in my opinion, been met to a sufficient degree—this is especially so as the individual recorded, being the real estate agent, is, essentially, anonymous. With disputed hearsay evidence, credibility is a central issue and the necessity for cross-examination is intensified. Further, there is an overriding duty of basic fairness and natural justice which requires that the recording be assessed in light of there being no opportunity to cross-examine and, secondly, of the patent vulnerability of that evidence to cross-examination—especially in connection with the possibility of, or perhaps absence of, a reason and/or motive to fabricate the statement and the lack of opportunity to correct or contradict any relevant prejudicial statement.
7. For these reasons and that the Tenant obtained the recording of a conversation that she was not a part of in a surreptitious and improper manner, I refused to admit the audio recording.

FINDINGS OF FACT

8. The application is based on an N12 Notice of Termination served on the Tenants on November 9, 2022, with a termination date of January 31, 2023. The N12 states that the Landlord personally requires the rental unit.
9. The Landlord filed a declaration sworn by the person who personally requires the unit certifying that the person in good faith requires the rental unit for his or her own personal use for a minimum of one year.
10. The parties agreed that the Landlord paid the Tenants compensation equal to one months rent on January 9, 2023, which was before the termination date in the notice.

GOOD FAITH INTENTION

11. The N12 was served pursuant to Section 48(1) of the *Residential Tenancies Act, 2006*, (the Act) which states in part:

48 (1) 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; ...

(c) a child or parent of the landlord or the landlord's spouse

12. 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 a sincere 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.
13. 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.

Landlord's Evidence

14. The Landlord testified at the hearing that he currently resides in the lower unit of the two-unit house. The rental unit that is subject to this application is the ground floor unit. The Landlord testified that he purchased the home with the intention to start a family with his current partner and to occupy the entire house. The Landlord testified that his mother is unable to come stay with him as the unit in the basement is too small for more than one or two people to occupy at a time.
15. Furthermore, the Landlord testified that his mother would be staying in the basement unit when she comes to visit so she can have her own space, and this was one of the reasons he purchased the house. The Landlord has lived in the lower unit now for almost 13 months. He does not own any other properties and he is a first-time home buyer. I accept the Landlord's testimony and find that there is a sincere intention for the Landlord to occupy the rental unit.

The Tenant's Evidence

16. The Tenant testified that she has been living in the rental unit for 6 years. The family composition is herself and 3 children- ages 6,10, and 12.

17. The Landlord's evidence was not overly contested by the Tenant. The Tenant testified that she heard through the audio recording mentioned above that the Landlord made comments towards getting her out of the unit and that his shows that he did not intend to occupy the rental unit. The audio recording was not permitted as evidence and the other party of the conversation (the real estate agent) was not at the hearing to testify to what was said. The Landlord however testified that he could not recall the conversation completely but reiterated his intentions when purchasing the unit have never changed and remain the same. Nonetheless, I found the Landlord to be credible, and I accept their evidence that they in good faith intend to occupy the rental unit for at least one year for the purpose of residential occupation.

RELIEF FROM EVICTION

18. 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 April 30, 2024, pursuant to subsection 83(1)(b) of the Act.
19. The Tenant has lived in the rental unit for 6 years. They testified that they have built strong ties to the community, and that the rental unit is close to the school that their 3 children attend.
20. I acknowledge the fact that the Landlord has been waiting since January 2023 to obtain possession of the unit that they purchased. However, their current housing situation is not in jeopardy, unlike that of the Tenant, and I accept the Tenant's evidence regarding the significant challenges she will experience as a result of the eviction. Additionally, the Landlord was clearly not averse to a delay in the eviction.
21. This order contains all of the reasons intended to be given, no further reasons shall issue.

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 April 30, 2024.
2. The Landlord shall apply the last month's rent deposit to the last month of the tenancy.
3. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 May 1, 2024.
5. The Tenant shall also pay the Landlord compensation of \$50.96 per day for the use of the unit starting May 1, 2024, until the date the Tenant moves out of the unit.



February 29, 2024

Date Issued

Colin Elsby

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 November 1, 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.