



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


File Number: LTB-L-029927-22

In the matter of: 5666 DOLMITE HEIGHTS
MISSISSAUGA ON L5M7B5

Between: Sherief Junny

And

Faten Sallam
Wael Mohammed

I hereby certify this is a
true copy of an Order dated
April 26, 2023

Landlord and Tenant Board

Landlord

Tenants

Sherief Junny (the 'Landlord') applied for an order to terminate the tenancy and evict Faten Sallam and Wael Mohammed (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.

This application was heard by videoconference on February 8, 2023.

The Landlord, the Landlord's Legal Representative Bruce Parsons and the Tenant Faten Sallam attended the hearing. The Tenant spoke with Duty Counsel prior to the hearing.

The parties filed post-hearing submissions by March 10, 2023.

Determinations:

1. In this application, the Landlord seeks an order allowing him to regain possession of the rental unit so that he and his spouse can reside there.
2. The Tenants do not believe that the Landlord will move into the unit. Instead, they allege that the Landlord wants to evict them because the Landlord doesn't want to deal with all the maintenance and repair issues in the rental unit. They also allege that the Landlord will demand a higher rent if he re-rents to new tenants.
3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.

Preliminary Issue

4. The Tenant F.S. requested an adjournment in order to obtain legal representation. She also submits that she did not have enough time to properly prepare for this hearing.
5. The Landlord's Legal Representative B.P. objected to an adjournment. He submits that the parties have had sufficient time to prepare. An adjournment would be highly prejudicial to

the Landlord, who has waited seven months to have the application heard only to receive a last-minute request to reschedule.

Adequacy of Notice

6. The Notice of Hearing was sent to the parties on December 30, 2023. On January 11, 2023 the Tenant W.M. filed submissions through the LTB Portal.
7. However, F.S. stated that she only became aware of the hearing a few weeks before the scheduled hearing. She was given a copy of the Notice of Hearing by her son. She stated that her spouse did not share it with her when he received it.
8. F.S. was provided with portal access by the LTB on January 17, 2023. The Tenants could access the application and evidence filed by the Landlord through the portal. Between January 26 and 29, 2023, F.S. filed multiple responding documents.
9. On January 30, 2023, F.S. then filed a request to reschedule the hearing. She stated that she was unable to obtain someone to assist her at the hearing "as I contacted them too late". F.S. also wanted time to obtain a City of Mississauga property standards report for which she had filed a Freedom of Information ("FOI") request that day.
10. I considered that, after the Tenants were served with the N12 Notice about seven months ago, they had ample opportunity to contact the LTB for information about the application and hearing processes. There was adequate time to contact a legal aid clinic, a paralegal or lawyer for advice about how to prepare for a probable LTB hearing should they chose to remain in the unit after the termination date. The N12 Notice also clearly describes the process for tenants to follow.
11. At least as of January 17th, F.S. was aware that the hearing was scheduled in just over three weeks. F.S. did not request to reschedule at that time but proceeded to upload evidence to the portal.
12. In my view, the parties were provided with reasonable notice of the hearing, in accordance with section 6.1 of the *Statutory Powers Procedures Act* and section 183 of the *Residential Tenancies Act, 2006* (the 'Act').
13. The adjournment request was denied. The hearing proceeded on the merits.
14. Of note, I stood the matter down until later in the afternoon, thus affording the parties additional preparation time. The Tenant had the opportunity to consult with duty counsel prior to the hearing.

Post-Hearing Submissions

15. During the hearing, F.S. faced some challenges in referencing the documents she intended to rely upon. This appeared to affect her ability to succinctly summarize her case.

16. To minimize any prejudice to the Tenants, and to ensure fairness to both parties, at the conclusion of the hearing I invited both parties to file written submissions. The Tenant was provided with an opportunity to follow up with the FOI request and to serve additional evidence on the Landlord. The Landlord would have a right to reply. A Member Direction was provided to the parties on February 9, 2023.

The L2 Application

17. The Tenants moved into the unit on October 1, 2016. The rental unit is 1,800 sq.ft. house with a garage and room to park several cars. The Tenants were in possession of the rental unit on the date the application was filed.
18. On May 28, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of July 31, 2022. The Landlord has compensated the Tenants an amount equal to one month's rent by July 31, 2022.
19. The Landlord signed a declaration that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

The Landlord's Reason for Wanting to Move Into the Rental Unit

20. The Landlord and his spouse reside in a 1,200 sq. ft. condominium unit ("condo") that he purchased in 2018. He and his spouse have found that, since their marriage 1.5 yrs. ago, there is insufficient space for them. They need room to park multiple vehicles. He testified that equally as important, if not more imperative, they can not afford to continue paying the \$15,000.00 per year in condo fees or the property taxes. He plans to sell the condo.
21. The Landlord testified that he has had issues with the Tenants from the very beginning of the tenancy and that the contentious relationship has continued to date. B.P submits that a significant source of friction between the parties was the Tenants' failure to maintain the unit in an ordinary state of cleanliness. The Landlord's concerns, he stated, were unrelated to his reason for wanting possession of the unit.

The Reason Why the Tenants Doubt the Landlord Will Move Into the Unit

22. The Tenants submit that the Landlord served the N12 Notice in bad faith. They claim that they and the Landlord have been experiencing conflict over maintenance and disrepair issues, and that this has contributed to the reason the Landlord wishes to evict the Tenants. With the Tenants gone, the Landlord will substantially increase the rent.
23. Alternatively, the Tenants submit, the application should be dismissed because the Landlord is in serious breach of the Landlord's obligations under section 20(1) of the Act.
24. The Tenants also submit that, after they complained to the City of Mississauga about mold in the unit, the Landlord retaliated by serving the N12 Notice.

- *Maintenance and Repair Issues*

25. The Tenants allege that from at least 2019 until December 2021 they asked the Landlord to attend to repairs, including the following: replace the broiler on the stove and a wobbly toilet seat; seal windows and a shower door; fix plumbing issues with a sink; repair a dishwasher and washing machine; remediate mold on a bathroom ceiling; repair a hole in the wall under a bedroom window; and maintain the yard. They claim that mold growth occurred from a water leak, possibly in the roof. The Landlord refused to take any action.
26. The Tenants repaired the faulty stove element, replaced parts for appliances and fixed the broken window glass among other things. In other words, they claim that they habitually did, or paid for, the repairs themselves.
27. F.S. referred to one particular incident which, she submits, reflects the Landlord's general approach to maintenance and repairs. On April 30, 2022, a cultural feast day, the Tenants were distressed when the kitchen sink fell on the floor. The Landlord told the Tenants by email that day that it must have been their fault. He informed them that the sink was attached by permanent adhesive which would never deteriorate. He told them to repair it.
28. The Tenants had a contractor attend for repairs. It is uncontested that the contractor found that the adhesive had worn out, causing the sink to detach and fall. The Landlord told the Tenants he would not pay the repair bill. Four weeks later he served the N12 Notice.

- *The Tenants Complain to the City*

29. The Tenants' evidence is that they complained to the City of Mississauga Property Standards about the mold shortly after the sink incident. They believe that the complaint was a trigger for the Landlord and the Landlord retaliated by serving the N12 Notice.
30. The Landlord says the timing of the service of the N12 Notice could not have been coincidental to the Tenants' complaint to the City. There is no dispute that a compliance Order was issued on May 18, 2022 or that it required the Landlord to obtain a mold assessment and to perform any necessary remediation.
31. However, the Landlord never received a copy of the Order because on May 21, 2023 it was mailed only to the Tenants. The fact that it was never mailed to the Landlord was confirmed in an email from a City clerk to the Landlord on February 21, 2023. Whether the Tenants gave a copy to the Landlord at any time is contested.
32. The Landlord denies that there is water leaking due to lack of maintenance and repair. After receiving a copy of the Order on February 21, 2023, the Landlord immediately hired GTA Mold Removal to inspect the unit. He stated that the contractor informed him on February 24, 2023 that the mold was very likely caused by the Tenants' failure to properly ventilate the bathroom and other areas of the unit.
33. The Landlord alleges that the Tenants have caused a lot of damage to the unit. He has served several N5 notices of termination, asking the Tenants to either perform repairs to the damage or pay for the repair costs.

- *The Tenants Claim the Landlord Harasses Them*

34. F.S. claims that the Landlord treats them as undesirable tenants. Every time she contacts the Landlord about maintenance or repairs, he blames her for causing the issue and tells her that they are responsible for repairs.
35. He also frequently makes unwelcome comments, such as claiming that F.S. has an unkempt and unclean home. She testified that she is reluctant, even scared, to contact the Landlord because of his accusatory behaviour.

Does the Landlord Genuinely Intend to Reside in the Rental Unit?

36. There is no doubt that the parties have a contentious relationship and it is possible that the Landlord may have other reasons for wanting the Tenants to move out. However, for the purpose of this application, the issue I must decide is whether the Landlord has a genuine intention to move into the rental unit and live there for a period of at least one year.
37. There was no Tenants' application before me. Therefore, my consideration of the Tenants' evidence about tenant issues was limited to its impact upon the Landlord's application.
38. I find that there is insufficient evidence upon which to determine that the Landlord filed this application as part of a campaign to evict the Tenants. A landlord is entitled to serve notices of termination on tenants for alleged breaches of the Act.
39. No objective evidence was led by the Tenants documenting any threats by the Landlord to evict them or telling them to move out. There was no evidence that the Landlord tried to raise the rent unlawfully prior to serving the N12 Notice or any evidence demonstrating that he seeks financial gain by renting to new tenants at a much higher rent.
40. I am satisfied, on the balance of probabilities, that the Landlord's explanation about why he wants to move into the rental unit is credible, and that he and his spouse intend to move into the unit.

Section 83 of the Act

Mandatory Refusal to Grant the Application Under Section 83 of the Act

41. The Tenants ask that the application be dismissed because the Landlord is in serious breach of the Landlord's obligations under subsection 20(1) of the Act.
42. Mandatory refusal of eviction subsection 83(3)(a) of the Act is generally accepted to refer to serious breaches of the Act by a landlord which exist at the time of the hearing. A serious breach means "more than the rental premises being in poor condition and in need of significant work...In short, a serious breach of the landlord's responsibilities is

not established simply by the rental premise being in need of extensive repairs.”¹ A serious breach typically involves substantial health and/or safety issues.

43. The Tenants did not provide specifics about serious breaches as of the date of the hearing. They did not submit any independent, credible evidence that would show that the mold, or any other disrepair, was a current, significant health issue.
44. I find that there was insufficient evidence upon which to make a finding of a serious breach. Neither am I persuaded that the Landlord brought the application because the Tenants complained to the City pursuant to subsection 83(3)(b) of the Act.
45. I am satisfied, on the balance of probabilities, that the Landlord was not provided with the City’s non-compliance Order until months after the N12 Notice was served.

Discretion to Refuse to Grant the Application

46. The Landlord’s conduct which led to the eviction should be considered when deciding whether to refuse to grant the application. I have taken into account the undisputed evidence of the Tenants about the Landlord’s unwelcome and dismissive conduct towards these Tenants. In particular, I have considered the April 30, 2022 incident.
47. The Landlord’s refusal to repair the sink that day or to pay for the repair was clearly wrong in the face of a professional opinion that the sink was in disrepair due to failed maintenance. The Landlord’s obstinate response, aggressive tone, and failure to address the issue was without doubt inappropriate.
48. However, in the absence of clear evidence of further objectionable conduct by the Landlord in the past 12 months, I find - by the smallest of margins- that pursuant to subsection 83(1)(a) of the Act it would be unfair to refuse to grant the application.
49. The Tenants’ issues are more appropriately dealt with in a different proceeding. The Tenants are entitled to commence their own application(s) against the Landlord to seek a remedy for their issues.
50. Additionally, the Act provides for a possible compensatory remedy for the Tenants if the Landlord fails to move into the Tenants’ unit within a reasonable amount of time. They may commence an application claiming “bad faith” pursuant to section 57 of the Act.

Discretion to Postpone an Eviction

51. 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 July 9, 2023 pursuant to subsection 83(1)(b) of the Act.
52. The Tenants have three children, one of whom is in elementary school and a second who is attending secondary school. The eldest child attends university. In the current housing

¹ (*Puterbough v. Canada (Public Works and Government Services)* [2005] O.J. No 5727).

market, it is also likely that the Tenants will need additional time to locate suitable housing and to arrange their affairs. There was no indication, and I do not find, that the Landlord has an urgent need to move into the unit.

53. The Landlord does not object to delaying his move in date to the end of the school year and proposes June 30, 2023 as the termination date. I note that school ends on June 29, 2023. I find that it would not be unfair to delay enforcement of an eviction for about one further week in the circumstances. The Tenants shall be given until July 9, 2023 to move out of the unit.

The Landlord Suggests An Apprehension of Bias

54. In his written submissions, the Landlord's Legal Representative expressed dissatisfaction based on a perception that I was unfairly assisting the self-represented Tenant F.S., and therefore I could not decide the application impartially. This created an apprehension of bias.
55. In order to ensure fairness for both parties, LTB Members may provide some degree of assistance to under-represented or self-represented parties, including where language may constitute a further barrier. The objective is not to help a particular party succeed but to ensure that all parties have access to a fair hearing. For example, a Member may provide information, give directions, help with understanding the process and the hearing requirements, and identify issues that have not been raised.
56. This kind of active adjudication is based on the idea that self-represented parties will rarely have the same advantages at a hearing as parties that are well-represented, no matter the amount of assistance the self-represented party receives from the adjudicator.
57. The grounds for apprehension of bias must be substantial. Additionally, concerns should be addressed as soon as they arise at the hearing. It is not appropriate for a party to raise issues of bias after the hearing is complete and an order has been issued.
58. Similarly, expressing concerns of bias after the hearing is complete but before the order has been issued is, in my view, improper. It would not be unreasonable to infer that the party made a tactical decision to allege bias in order to sway the Member to issue a decision in their favour- in other words, to avoid the appearance of being biased.
59. The test for apprehension of bias is an objective one. The question is whether or not an impartial and informed third person would reasonably believe that the application would be adjudicated fairly.
60. There is no evidence demonstrating that the hearing process was manifestly unfair to the Landlord during the hearing. Ample time was provided to the parties to provide evidence. An additional post-hearing opportunity to clarify positions was given to each party.
61. The Landlord, who was represented, was permitted to first review the Tenants' post-hearing submissions before responding with their own submissions. I point out that the

Landlord gave no notice to the Tenants that he was raising the issue of bias nor offered any opportunity to the Tenants to respond.


62. I do not need to hear from the Tenants in this regard. In this case, I do not believe that an informed and reasonable person, realistically and practically, and having thought the matter through, would conclude that this matter would not be decided fairly.
63. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before July 9, 2023.
2. If the unit is not vacated on or before July 9, 2023, then on July 10, 2023, 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 July 10, 2023.

April 26, 2023

Date Issued



Elle Venhola
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 October 27, 2023 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.