



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

Citation: Khan v Rodd, 2022 ONLTB 9133

Date: 2022-10-18

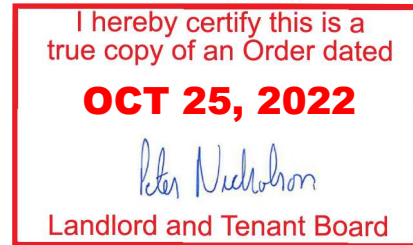
File Number: LTB-L-006774-22

In the matter of: Main Unit, 1054 MARGARET ST
LONDON ON N5W2K1

Between: Tahseen Khan

And

Rebecca Rodd



Landlord

Tenant

Tahseen Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Rebecca Rodd (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 September 6, 2022.

The Landlord, the Landlord's representative L McCullough, the Landlord's witness Asghar Ali ("AA"), the Tenant and the Tenant's witness Jeannine Finney ("JF") attended the hearing. The Tenant was assisted tenant duty counsel.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on December 31, 2022.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 19, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2022. The Landlord claims they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's spouse, AA.
4. The Landlord has met the 60 day notice requirement of [s.48\(2\)](#) of the [Act](#), and I am satisfied that the Landlord has met the declaration requirement of [s.72\(1\)\(b\)](#) of the Act and the one month's compensation requirement of [s. 48.1](#) of the Act.

5. The issue to be determined in this application is whether the Landlord has satisfied the “good faith” requirement set out in subsection 48(1). In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), the court clarified the Landlord’s good faith requirement as follows:

In my view, [s. 48(1)] charges the finder of fact with the task of determining whether the landlord’s professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

6. The residential complex was recently purchased by the landlord is comprised of a basement unit and the rental unit which is located on the main floor.
7. The Landlord testified she is currently renting an apartment in Toronto until her temporary employment contract comes to an end in December 2022.
8. The basement unit is currently vacant and it is the Landlord’s evidence that her spouse will move into the rental unit once it is vacant and that she will subsequently join her spouse at the rental unit once her employment contract ends on December 31, 2022. The Landlord indicated her spouse cannot move into the building until the Tenant has vacated due to the Tenant’s smoking and the adverse breathing and allergy complications caused by the smoke.
9. Once the building is treated and cleaned, the Landlord intends to use the vacant basement unit as an office and live in the rental unit with her family. The Landlord produced documentation in support of her testimony that she intends to start a small business in the nearby area and that the rental unit is thus, their preferred location to reside.
10. The Tenant noted the two units located at the residential complex are separate and distinct units with separate entrances and thermostats. The Tenant challenged the Landlord’s professed intent, suggesting it is not reasonable for the Landlord to require both rental units in the building, and that the Landlord has not presented sufficient evidence to show that both units will be extensively renovated and “merged” into a larger unit for the Landlord’s and her spouse’s use.
11. I found the Landlord’s evidence credible and overall, I found her expressed intent for the rental unit to be consistent with her stated career objectives. The Landlord produced franchise discussion correspondence in support of her desire to establish a small business in the London area and I find it believable her family will be moving into the rental unit to facilitate this new business venture.

Section 83

12. 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 December 31, 2022 pursuant to subsection 83(1)(b) of the Act. The Tenant resides with her 19-year-old son and has lived at the rental unit for approximately 6 years. The Tenant indicated she is on ODSP and has had difficulty securing alternative, and suitable accommodations given her fixed income.

13. In the event eviction were ordered, the Tenant requested until December 31, 2022, noting this was the date the Landlord's employment ended in the Toronto area. While I appreciate the Landlord's desire for her spouse to move into the rental unit prior to December 31, 2022, I find that postponement of the eviction is reasonable in the circumstances as the Landlord and her spouse at least have other housing options in the meantime.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated on December 31, 2022. The Tenant must move out of the rental unit on or before December 31, 2022.
2. If the unit is not vacated on or before December 31, 2022, then starting January 1, 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 January 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$35.28 per day for the use of the unit starting January 1, 2023 until the date the Tenant moves out of the unit.



October 25, 2022

Date Issued

Peter Nicholson

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 July 1, 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.

