



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

Citation: Sapkota v Kanagaraja, 2023 ONLTB 51947

Date: 2023-07-21

File Number: LTB-L-057946-22

In the matter of: BSMT Unit 1, 32 MACKINAC CRES
SCARBOROUGH ON M1J1P9

Between: Surendra Sapkota

And

Pradeeson Kanagaraja

I hereby certify this is a
true copy of an Order dated
JUL 26, 2023
Landlord and Tenant Board

Landlord

Tenant

Surendra Sapkota (the 'Landlord') applied for an order to terminate the tenancy and evict Pradeeson Kanagaraja (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 April 18, 2023.

The Landlord, the Landlord's representative Vijay Shah and the Tenant attended the hearing.

Determinations:

1. The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit for the purpose of residential occupation. The termination date in the N12 is November 30, 2022. In the notice, the Landlord indicated that he was seeking to terminate the tenancy for his own use.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord provided the Tenant compensation equivalent to one month's rent on October 15, 2022.
4. The Landlord filed a Declaration dated October 6, 2022 stating that in good faith, they personally require the rental unit for a period of at least one year.

Good Faith

5. The only remaining issue to be determined is whether the Landlord requires the unit in good faith.
6. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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.
7. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.
8. The Landlord submitted as evidence the Landlord's current living condition, where they reside in 1 single bedroom in a multi-family home.
9. The Landlord testified that he currently lives with his brother. Due to his brother's growing family, the Landlord was asked to vacate his current accommodations to make room for his brother's children.
10. The Landlord also testified that they would require the entire basement unit of the residential complex for himself and his wife who is coming from India in October 2023.
11. The Tenant questioned the Landlord why the Tenant was not given an opportunity to rent one of the 4 upstairs unit when they became vacate. The Landlord testified that, at the time, the Tenant still had possession of the basement unit and was also not paying rent in the basement.
12. The Tenant did not dispute that the Landlord would not be moving in, only that the Tenant still desired to live at the property either with the Landlord or live upstairs in the home in one of the upstairs units.
13. While the Tenant acknowledged that they were in rental arrears, I am not prepared to draw an inference that the Landlord is requiring the unit as the result of rental arrears. In addition, whether the Landlord had other options for residential occupation is not determinative of genuine intent to occupy the residential occupancy of the rental unit in question.
14. I am therefore satisfied on a balance of probabilities that the Landlord, in good faith, requires possession of the rental unit for the purpose of residential occupation and he genuinely intends to reside in the rental unit and for a period of one year.

Section 83 Considerations & Relief from Eviction

15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Tenant provided medical evidence establishing that they are a person with disabilities. When asked how long it would take to vacate if the tenancy was terminated, the Tenant submitted they would require approximately 6 months to vacate, due to their disabilities and the difficulty in finding a place at the Tenant's current price range and budget.
17. Considering the Landlord's evidence that his family would not be arriving until October 2023, I find it appropriate to postpone termination to September 30, 2023. This period will allow the Tenant with some time to organize their affairs and find a new residence. I do find that postponing the eviction any further would be unfair to the Landlord in the circumstances.

Daily compensation

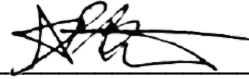
18. The Tenant was required to pay the Landlord \$2,497.34 in daily compensation for use and occupation of the rental unit for the period from December 1, 2022 to April 18, 2023, less any amounts already paid.
19. Based on the Monthly rent, the daily compensation is \$17.97. This amount is calculated as follows: $\$546.48 \times 12$, divided by 365 days.
20. The Landlord collected a rent deposit of \$440.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$10.43 is owing to the Tenant for the period from October 30, 2020 to April 18, 2023 .
21. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.
4. The Tenant shall pay to the Landlord \$2,497.34, less any amounts already paid which represents compensation for the use of the unit from December 1, 2022 to April 18, 2023.
5. The Tenant shall also pay the Landlord compensation of \$17.97 per day, less any amounts already paid for the use of the unit starting April 19, 2023 until the date the Tenant moves out of the unit.

6. The Landlord owes \$450.43 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
7. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

July 26, 2023
Date Issued



André-Paul Baillargeon-Smith
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 April 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.