



**August 3, 2022**

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

**Citation:** Zahid v Agha, ONLTB2528

**Date:** 2022-08-03

**File Number:** LTB-L-008384-22

**In the matter of:** 167, 5980 WHITEHORN AVE  
MISSISSAUGA ON L5V2Y3

**Between:** Shazia Shahnaz, Tanvir Hasan Zahid Landlords

**And**

Naveed Agha, Raheela Agha Tenants

Shazia Shahnaz, Tanvir Hasan Zahid (the 'Landlords') applied for an order to terminate the tenancy and evict Naveed Agha, Raheela Agha (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 June 7, 2022.

The Landlords, the Landlords' Representative Yasmin van Maurik and Tenants attended the hearing.

**Determinations:**

1. Based on the evidence, I am satisfied on a balance of probabilities that 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.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On January 25, 2022, the Landlords gave the Tenants an N12 notice of termination deemed served on January 30, 2022 with the termination date of April 30, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation for their own family.
4. The Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

5. The Landlords compensated the Tenants an amount equal to one month's rent on February 1, 2022.
6. Based on the monthly rent, the daily compensation is \$72.33. This amount is calculated as follows: \$2,200.00 x 12, divided by 365 days.
7. There is no last month's rent deposit.
8. The issue to be determined is whether the Landlords "in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year", as per subsection 48(1) of the *Residential Tenancies Act, 2006* (the 'Act').
9. The leading case on the determination of good faith in a landlord's own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a residence.
10. The Landlord testified that his family sold their primary home on January 15, 2022, that he is currently residing in a one bedroom rental and is incurring rental and storage fees for furnishings and belongings. Of most concern is the fact that he is currently separated from his wife and daughters, they reside in another country, awaiting the time to be reunited together in the rental unit.
11. The Landlord is familiar with the rental unit neighbourhood as his family resided there prior to leasing it out, wishes to enroll his daughters in a nearby day care and allow for his wife to have closer access to her place of employment as it is also located in Mississauga.
12. The Landlord submitted that he had served the Tenants a prior N12 notice in 2019, the notice had been rescinded and that based on the sale of this primary home he and his family intend to move into the rental unit. While the rental unit was once an investment property, is now the only residence his family has to move into and wishes to reside there on a long term basis.
13. The Tenants believe that what the Landlords really want is to renovate and sell the property. This is based on the prior N12 notice received and ongoing requests for an increase in rent, increases that were above the guideline and suggestions by the Landlord that the house would be sold if the increase was not agreed to.
14. The Tenants describe themselves as a senior couple who have been living in the rental unit for over 5 years, that they have been looking for a new rental unit since being served with the N12 notice on or about January 30, 2022 and that it is hard to find rentals based on their limited incomes. Both Tenants are employed however their incomes are limited to part time and modified work based on a prior workplace injury.

15. I accept the evidence of Landlord, that he and his family genuinely want to move into the rental unit and live there for a period of at least one year. While the Tenants have suggested their eviction is motivated by the Landlords possibility of selling the property, there is no concrete evidence to support such assertions. All of the Landlords actions are in support of their intention to reside in the rental unit, specifically selling their primary home in January 2022, incurring temporary rental costs and living in separation while awaiting to reclaim their property and move into it. Therefore, I find that the N12 notice of termination was served in good faith.
16. 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 August 31, 2022 pursuant to subsection 83(1)(b) of Act. While the Tenants have asked for six months to secure a new rental, I balance this request with the family separation the Tenants are currently experiencing. I also take into consideration the difficulty in securing a new rental property in today's market conditions, notwithstanding, the Tenants have known about the possibility of moving out of the rental unit for more than six months as of the time of this order issuance.
17. 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 August 31, 2022.
2. If the unit is not vacated on or before August 31, 2022, then starting September 1, 2022, 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 September 1, 2022.
4. The Tenants shall also pay the Landlord compensation of \$72.33 per day for the use of the unit starting July 1, 2022 (at the time of hearing rent had been paid up to June 30, 2022) until the date the Tenants moves out of the unit.
5. If the Tenants do not pay the Landlords the full amount owing on or before August 31, 2022, the Tenants will start to owe interest. This will be simple interest calculated from September 1, 2022 at 3.00% annually on the balance outstanding.

August 3, 2022  
**Date Issued**

  
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Alicia Johnson  
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 [blank] 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.