



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-22066-21

In the matter of: 500 WEYNWAY COURT E
OAKVILLE ON L6L4G7

Between: Dhanbier Sanghera Landlord

and

Shail Sharma Tenants
Steve Sharma

Dhanbier Sanghera (the 'Landlord') applied for an order to terminate the tenancy and evict Shail Sharma and Steve Sharma (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This hearing was held by videoconference on September 1, 2021. The Landlord and the Landlord's representative, Timothy Ellis, attended the hearing. The Tenants were not present or represented at the hearing although properly served with notice of this hearing by the Board.

Determinations:

Service of the N12 Notice of Termination

1. The Landlord's Certificate of Service for the N12 Notice of Termination indicates that the N12 was served by the Landlord's son, Sarinder Sanghera on May 24, 2021 by taping it to the front door because the Tenant refused to answer the door. The Landlord testified that the Tenant was aware of his son's presence and was speaking with his son about the service of the N12, but that the Tenant refused to open the door. His son was unable to slide the N12 below the door; therefore, he taped the notice to the front door.
2. In accordance with section 191(1) of the *Residential Tenancies Act, 2006* (Act), taping a notice to the front door is not an approved method of serving a notice.
3. However, I am satisfied that the Tenant was aware of the Landlord's son's presence and the reason for his presence – the service of the N12. I am also satisfied that on a balance of probabilities that the contents of the N12 came to the attention of the Tenant before June 1, 2021 – a date 60 days before the date of termination. Thus, in accordance with section 191(2) of the Act, I find that the Landlord's N12 Notice of Termination is deemed to have been validly given on May 24, 2021, with a termination date of July 31, 2021. The N12 seeks termination of the tenancy on the ground that the

Landlord requires possession of the rental unit for the purpose of residential occupation for his son.

Good faith

3. The N12 was served pursuant to section 48 of the Residential Tenancies Act, 2006 (Act). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 notice, the Landlord required, in good faith, the unit for residential use.
4. 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 the Landlord sincerely 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."
5. 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."
6. The Landlord testified, and also provided a signed declaration from his son, Sarinder Sanghera, dated July 13, 2021, that his son requires the residence at 500 Weynway Court East in Oakville for his own use for at least one year. Sarinder Sanghera also testified that the rental unit is his childhood home, and that he would like to move back into the house with his wife and children to raise their children for many years.
7. The Tenants were not present at the hearing to provide testimony or documentary evidence refuting the Landlord's genuine intention to use the rental unit for the purpose of residential occupation, or challenging the Landlord's evidence respecting his son's genuine intention to live in the rental unit with his family for a period of at least a year.
8. I am satisfied, based on the Landlord's unchallenged evidence, that the Landlord genuinely intends to use the rental unit for the purpose of residential occupation. I further find that the Landlord's son in good faith requires possession of the rental unit for the purpose of residential occupation.

Compensation

9. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the Landlord of the property, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.

10. The Landlord testified that he discussed a compensation plan with the Tenants that included waiving rent of \$2100.00 for the month of July 2021; however, the Tenants were not agreeable to the compensation plan, noting in early July 2021 that there were no rent arrears for July 2021. The Landlord testified further that rent was in fact in arrears for the months of May, June and July 2021 totalling an amount of \$6300.00. The Landlord testified that despite the Tenants' non-concurrence, one month's rent compensation was provided to the Tenants before the date of termination of July 31, 2021, through waiving the \$2100.00 July 1, 2021 rent payment for the month of July 2021. The Tenants were not present at the hearing to dispute the Landlord's testimony.
11. I find that the Landlord has met his obligation to pay the Tenants compensation equal to one month's rent in accordance with section 48.1 of the Act.

Relief from Eviction

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
13. The Landlord testified that on May 3, 2021 the Tenants advised him that they were not satisfied with the rental unit, and that they would vacate the unit between May 15, 2021 and May 31, 2021. The Landlord stated that the Tenants requested a return of their first and last month's rent that he provided in an amount of \$2400.00 on May 3, 2021. He noted further that he has had no communication with the Tenants since May 3, 2021, nor have they provided him with any rent payments or paid for utilities. The Landlord testified that he believes some family members of the Tenants have vacated the rental unit, and that the Tenants are now subletting rooms within the residence. The Landlord was concerned that the subletting of rooms would delay the Tenants and occupants in vacating the rental unit, and thus postpone the availability of the unit for the residential occupation of his son.
14. The Tenants were not present at the hearing to provide testimony or documentary evidence in support of any relief from eviction, nor was the Landlord aware of any personal circumstances of the Tenants that should be considered in the determination of granting any relief.
15. In this matter, I therefore find that it would be unfair to the Landlord to grant the Tenants relief from eviction.

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 October 2, 2021.
2. The Tenants shall pay to the Landlord \$3,590.08, which represents compensation for the use of the unit from August 1, 2021 to September 21, 2021.

3. The Tenants shall also pay to the Landlord \$69.04 per day for compensation for the use of the unit from September 22, 2021 to the date they move out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before October 2, 2021, the Tenant will start to owe interest. This will be simple interest calculated from October 3, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before October 2, 2021, then starting October 3, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 October 3, 2021.

2021 CanLII 125880 (ON LTB)

September 21, 2021
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7

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 expires on April 3, 2022 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.