



Order under Section 69
Residential Tenancies Act, 2006

File Number: TNL-31911-21

In the matter of: 280 WATERLOO AVENUE
NORTH YORK ON M3H3Z7

Between: Oh Kwang Kwon Landlords
Joung Nam Choi

and

Charlotte La Forgia Serrano Tenants
German Alejandro Vivas Yanguas

Oh Kwang Kwon and Joung Nam Choi (the 'Landlords') applied for an order to terminate the tenancy and evict Charlotte La Forgia Serrano and German Alejandro Vivas Yanguas (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This hearing was held by videoconference on August 19, 2021. The Landlords and the Landlords' translator, their daughter Helena Kwon, attended the hearing. The Tenants also attended the hearing. Helena Kwon provided translation services from English to Mandarin and from Mandarin to English.

Determinations:

1. On April 15, 2021, the Landlords served the Tenants with an N12 Notice of Termination (N12) with a termination date of June 30, 2021. The N12 seeks termination of the tenancy on the ground that the Landlord requires the rental unit for residential occupation.

Good faith

2. 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, he required, in good faith, the unit for residential use.
3. 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."

4. 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."
5. The Landlords testified that the residence at 280 Waterloo Street was at one point their family home; however, they decided to rent it for a couple of years while living abroad. When they returned to Canada they purchased another home in Mississauga, Ontario. The Landlords testified further that they are currently retired with no income and they would like to reduce their maintenance costs of owning two properties by moving into the rental unit and selling their current home in Mississauga. The Landlords provided a signed declaration dated April 16, 2021 that they in good faith will occupy the residence at 280 Waterloo Street in North York for a minimum of one year.
6. The Tenants testified that the Landlords' current home in Mississauga is close to the Landlords' daughter, and they have no idea why the Landlords want to move into the rental unit that is an older home with several maintenance issues. They further testified that a real estate representative advised them that the Landlords originally wanted to sell the rental unit. The Tenants did not provide any further testimony or documentary evidence to counter the Landlords' genuine intention to reside in the rental unit for a period of at least one year.
7. I am satisfied, based on the Landlords' evidence, that they genuinely intend to use the rental unit for the purpose of their own residential occupation for at least one year. I find that 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.

Compensation

8. 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, 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.
9. The Landlords testified that one month's rent compensation in the amount of \$2600.00 was provided to the Tenants by cheque on April 15, 2021. The Tenants confirmed receipt of this compensation.
10. I am satisfied that the Landlords met their obligation to pay the Tenants compensation equal to one month's rent in accordance with section 48.1 of the Act.

Relief from Eviction

11. 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 October 31, 2021 pursuant to subsection 83(1)(b) of the Act.
12. The Tenants testified that it is currently very difficult to find a new rental unit, particularly an entire house. They noted that rental rates have increased dramatically since moving into their current residence on November 1, 2016. The Tenants expressed concern about securing affordable day care services in a new neighbourhood.
13. I find that, although the Landlords in good faith require possession of their rental unit for their residential occupation, postponing the Tenants' eviction until October 31, 2021 will provide the Tenants with more time to secure a rental unit, and potentially new day care facilities, that satisfy their requirements. I find that this postponement would not be unfair to the Landlords. The Landlords have a suitable current residence as well as some flexibility regarding when they choose to sell that residence.

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 October 31, 2021.
2. If the unit is not vacated on or before October 31, 2021, then starting November 1, 2021, 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 November 1, 2021.

September 13, 2021
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

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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 May 1, 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.