



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

Citation: Pandya v Alkhatib, 2023 ONLTB 16514

Date: 2023-01-26

File Number: LTB-L-021279-22

In the matter of: 2093 FALLING GREEN DR
OAKVILLE ON L6M0G9

Between: Sudhir Pandya
Nishi Pandya Landlords

Anda

Hayan Alkhatib
Wedad Ismaeil Tenants

Sudhir Pandya ('SP') and Nishi Pandya ('NP') (the 'Landlords') applied for an order to terminate the tenancy and evict Hayan Alkhatib and Wedad Ismaeil (the 'Tenants') because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on January 11, 2023. The Landlords, their legal representative, C. Corsetti, the Tenants, and their legal representative, S. Balasunderam attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is granted, and the tenancy shall terminate.
2. The Tenants was in possession of the rental unit on the date the application was filed.
3. On March 25, 2022, the Landlords gave the Tenants an N12 notice of termination with the termination date of March 31, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlords filed a declaration with the Board supporting their intentions to move into the rental unit and reside there for a period of at least one year.
5. The Landlords collected a rent deposit of \$3,700.00 from the Tenants and this deposit is still being held by the Landlord.
6. 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

Compensation:

7. For the following reasons, I find that the Landlords have compensated the Tenants an amount equal to one month's rent, in accordance with section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
8. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48".
9. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination.
10. There was no dispute that on May 30, 2022, one of the Landlords sent an e-transfer to the Tenants. The Tenants never accepted the e-transfer and as such, it was sent back to the Landlords as undeliverable.
11. The Landlords attempted to pay the Tenants the compensation pursuant to section 48.1 of the Act. the Tenants refused to accept the transfer as they wanted to have this matter resolved by a hearing. I find that the Landlords have met their requirement to pay compensation. I say this because it would be an absurd result that the Tenants could unilaterally frustrate the Landlords application by refusing to accept the compensation.
12. However, given the language of section 83(4) of the Act, the Board shall not issue an eviction order if the landlord has not complied with paying the compensation. I stood the matter down at the hearing so that the Landlords could attempt, once again, to pay the Tenants the compensation. I received confirmation by the Tenants that they had received the compensation from the Landlords.

Do the Landlords Genuinely Intend to Move into the Rental Unit?

13. The first question to be answered on an application like this is whether or not the Board believes the Landlords genuinely intend to move into the rental unit.
14. The Landlords testified at the hearing that they currently reside in Peterborough in a unit that they rent. SP is a doctor, and NP is a former Montessori teacher. The Landlords submitted that they are planning on relocating to Oakville as they have family who still reside there and would like to be closer to them and SP is currently looking at changing job postings in or around the Toronto area. He is anticipating completing his MBA in February 2023, which will open different career opportunities for him that are better suited for his age.
15. NP testified that during her time in Peterborough it has been very hard to find a job in her field as there are not as many opportunities as in Oakville, and so she is looking to find new job opportunities.
16. It was evident throughout the proceeding that a real point of contention regarding the Landlords intention to reside in the unit was surrounding negotiations that took place

between the parties with respect to the Landlords potentially selling the rental unit to the Tenants.

17. There was no dispute between the parties that in or around July 2021, the parties began discussing the possibility of the Tenants purchasing the property from the Landlords. The Tenants submitted that there was a prior N12 that was served to them during the same time as these negotiations. At the hearing, the Tenants relied on a series of text messages and a real estate listing which outlined a majority of what transpired between them and the Landlords.
18. During cross examination of the Landlords' evidence, their intentions regarding the negotiations, sale of the property, and the service of the previous N12 was heavily questioned. The Landlords consistently submitted that they no longer have an intention to sell the rental unit and intend to move back indefinitely.
19. The Tenants submitted that they felt as though this notice of termination was served in bad faith and the Landlords do not have a genuine intention to move in because the negotiations broke down and ultimately were not successful.

ANALYSIS

20. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
21. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
22. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
23. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

"We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives

of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

24. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
25. Albeit the failed negotiations or not getting the desired purchase price may have been an underlying motive for the Landlord to serve the notice of termination. However, I do not find that this on its own is indicative that the Landlord does not have a genuine intention to occupy the rental unit. I must also consider the passage of time between the negotiations and the service of the notice, which is approximately over a year.
26. I am satisfied that on a balance of probabilities the Landlords genuinely intend to move into the rental unit. Their testimony was creditable and therefore reliable. I am satisfied that the Landlords have met the “good faith” requirement as set out in the Act.

RELIEF FROM EVICTION

27. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
28. The Tenants have lived in the rental unit since 2018. Living with the Tenants in the rental unit is their 5-year-old son and their elderly parents.
29. Both the Tenants son and the female Tenant are attending school in the area. The Tenants requested until the end of June 2022 to find alternative accommodations.
30. The Landlords are currently renting a property in Peterborough and submitted that they are not under the threat losing their accommodations there and would need to give their own Landlord 30 days notice to terminate their own tenancy.
31. In consideration of both parties' circumstances, I find this termination date to be appropriate. The Tenants have been granted addition time to secure a rental unit and the delay is not so lengthy that would prejudice the Landlords.
32. This Order contains all the reasons for this matter. No further reasons will issue.

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 March 31, 2023.

2. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, 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 Landlord on or after April 1, 2023.
4. The Tenants shall also pay the Landlord compensation of \$121.64 per day for the use of the unit starting April 1, 2023 until the date the Tenant moves out of the unit.
5. The Landlords shall apply the last month's rent to the last month of the tenancy.

January 26, 2023

Date Issued

Curtis Begg

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 October 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.