



**Order under Section 21.2  
of the Statutory Powers Procedure Act  
and the Residential Tenancies Act, 2006**

**Citation:** Shukla v Mohammad, 2023 ONLTB 55969

**Date:** 2023-08-14

**File Number:** LTB-L-042772-22-RV

**In the matter of:** 129 McLaughlin Avenue  
Milton, ON L9T 7P5

**Between:** Uday Shukla

**And**

Jokhadar Imad Mohammad  
Al Mais Nahida

I hereby certify this is a  
true copy of an Order dated  
**AUG 14 2023**  
Landlord and Tenant Board

Landlord

Tenants

Uday Shukla (the 'Landlord') applied for an order to terminate the tenancy and evict Jokhadar Imad Mohammad and Al Mais Nahida (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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was resolved order LTB-L-042772-22 issued on May 1, 2023. The hearing took place by videoconference.

On May 31, 2023, the Tenants requested a review of the order and that the order be stayed until the request to review the order is resolved.

On June 1, 2023 interim order LTB-L-042772-22-RV-IN was issued, staying the order issued on May 1, 2023.

The Tenant's request to review was heard by videoconference on July 4, 2023. The Tenant Nahida Al Mais, the Tenant's Legal Representative Shikha Kapoor, the Tenants' witness Bennie Bullock ('BB') the Landlord and the Landlord's Legal Representative Jane Dean attended the hearing.

**Determinations:**

1. For the reasons given at the hearing, I was satisfied that the Tenants were not reasonably able to participate in the proceedings that took place on March 21, 2023. Accordingly, the Tenants' request to review was granted and the Landlord's application was heard *de novo*.
2. While the Landlord's Legal Representative submitted that the notice of hearing was e-mailed to the Tenants prior to the hearing, the Tenants were under the impression that this application would be withdrawn as the Landlord's did not attend a previous hearing scheduled for January 26, 2023.

### *L2 Application*

3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated as of September 30, 2023.
4. The Tenants were in possession of the rental unit on the date the application was filed.
5. On June 28, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of August 31, 2022. The Landlord claims that he in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.
6. The Landlord testified that he is currently living with his brother in Cambridge. He testified that his items are currently being stored at a storage facility in Milton.
7. The Landlord testified that he had attempted to sell the residential complex last year however, the sale fell through because the Landlord was unable to provide vacant possession to the potential purchaser.
8. The Landlord testified that since then he has decided to repossess the unit as he intends on going to India to get married and plans on returning to Canada to live in the unit to start his family.
9. While the Landlord testified he has not met his future wife, he testified that she has been selected and agreed upon by his and her families.
10. The Landlord compensated the Tenants an amount equal to one month's rent by August 31, 2022.
11. The Tenant testified that she was advised by the Landlord in July 2021 that he wanted to move into the unit and that if the Tenants disagreed that he would raise the rent by \$300.00 a month.
12. BB also testified on behalf of the Tenants and testified that previous tenants had moved out of the unit as the Landlord had intended to sell the unit however, the sale fell-through. The Tenants' Legal Representative suggested that the Landlord's motives were untruthful as the Landlord had previously evicted tenants where the house never sold.
13. While the Tenant's Legal Representative did not raise this issue up prior to the hearing, the Tenant's Legal Representative submitted that the Landlord's declaration is invalid because it is not dated.

### *Analysis & Findings*

14. On a balance of probabilities, I am satisfied that the Landlord in good faith intends on occupying the rental unit for the purpose of residential occupation for at least one year.
15. The Landlord has been living at his brother's home since 2022 and has been seeking to move into the rental unit since the sale of the residential complex fell through in 2022. The Landlord intends on marrying and bringing his wife to Canada from India and I accept the Landlord's evidence with respect to these plans.

16. BB's testimony with respect to the previous tenants was not helpful. BB did not even know the name of the Landlord and had no knowledge regarding the particulars of the sale. Further, the evidence he provided with respect to the previous tenants was hearsay.
17. Further, the Landlord's Legal Representative submitted that the rent for the unit was \$2,775.00. The application states the rent is \$3,000.00 however, the arrears the Landlord alleges is outstanding would indicate the rent is \$2,775.00 and as such, it is unclear whether or not the Tenants paid the alleged rent increase as was threatened by the Landlord.
18. Further, while the Landlord's declaration was not dated, I do not find that this omission nullifies the Landlord's declaration. Section 72(1) of the *Residential Tenancies Act, 2006* (the 'Act') states that the declaration must be sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his own personal use for a period of a year.
19. The Landlord's application contains all of the required information as outlined under s. 72 and the Landlord provided *viva voce* evidence with respect to same. As such, I do not find that the Landlord's declaration was invalid.

#### *Daily Compensation*

20. The Tenants were required to pay the Landlord \$30,279.45 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to July 4, 2023. The Landlord's Legal Representative submitted that the Tenants were in arrears of \$8,325.00, which was rent for May, June and July as of the date of the hearing.
21. Based on the Monthly rent, the daily compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
22. There is no last month's rent deposit.

#### *Section 83 Considerations*

23. The Tenant testified that she has had a heart attack and that moving would be difficult on her and her three children. The Tenant was unable to provide a specific timeline regarding her ability to vacate the unit. The Landlord's Legal Representative is seeking an order to the end of August.
24. Having considered the evidence of both parties, eviction will be delayed until the end of September. The Tenants have been aware of the Landlord's plans for quite some time and have seemingly made little effort to try to find a new unit. That said, the Tenants have three children and eviction will be delayed until the end of September.
25. 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 September 30, 2023 pursuant to subsection 83(1)(b) of the Act.

#### **It is ordered that:**

1. The interim order issued on June 1, 2023 is cancelled.

2. The request to review order LTB-L-042772-22 issued on May 1, 2023 is granted. The order is cancelled and replaced by the following.
3. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before September 30, 2023.
4. 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.
5. 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.
6. The Tenants shall pay to the Landlord \$8,325.00 which represents compensation for the use of the unit from September 1, 2022 to July 4, 2023, subtracting any rent which has already been paid within this period..
7. The Tenants shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting July 5, 2023 until the date the Tenant moves out of the unit.
8. If the Tenants do not pay the Landlord the full amount owing on or before September 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

**August 14, 2023**  
**Date Issued**

  
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Jagger Benham  
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.