

Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-19800-21

In the matter of: UPPER, 208 WENTWORTH STREET N
HAMILTON ON L8L5V7

Between: Avra Weinstein Landlord

and

Brianne Grant Tenant

Avra Weinstein (the 'Landlord') applied for an order to terminate the tenancy and evict Brianne Grant (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on July 28, 2021 at 9:00am.

Only the Landlord attended the hearing when the matter was brought forward at 11:40am. The Landlord was represented by Vijay Shah.

Determinations:

1. The Tenant is in possession of the rental unit.
2. This is a month-to-month tenancy in which rent is due on the first of the month.
3. The Landlord's L2 application is based on a N12 notice of termination served to the Tenant on February 2, 2021 with a termination date of April 30, 2021 pursuant to subsection 48(1) of the Residential Tenancies Act, 2006 which states:

48 (1) A landlord may, by notice, terminate a tenancy if 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 by,

(a) the landlord;

4. Section 55.1 of the *Residential Tenancies Act, 2006* (the 'Act') states that compensation owing under section 48.1 of the Act is due by the termination date on the notice of termination. This means that the Landlord had until April 30, 2021 to pay the Tenant this amount.

5. As of the date of the hearing, the Landlord's evidence was, the required compensation was paid, but after the termination date, on July 26, 2021.
6. The Landlord filed a declaration and testified at the hearing that she would be moving into the rental unit for her own personal use for more than one year. She testified that she has been going through a divorce for the past five years and currently occupies the main floor, with her brother residing in the sunroom. She plans to move to the upper unit so that she has her own privacy and her brother can have a proper living space. The Landlord seeks a termination of the tenancy.

ANALYSIS

7. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("*Salter*"), this legal test remains unchanged under the successor legislation (see *Salter*, para. 25 and 26).
8. The subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC) ("Fava").
9. Based on the Landlord's uncontested evidence, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for herself.
10. With respect to the delay in the payment of the compensation, I find that while the Landlord not knowing about the deadline is not a valid reason for the delay as it is clearly stipulated on the N12 notice of termination that was served to the Tenant and provided by the Landlord, the fact that the compensation has been paid is in compliance with the spirit of the Act. The purpose of this compensation is to assist tenants financially in relocating themselves when the Landlord serves them a notice of termination based on a no-fault ground –the Landlord has met this purpose by doing so, even if it was late.
11. Section 190 (2) of the Residential Tenancies Act, 2006 states:

The Board may extend or shorten the time requirements with respect to any matter in its proceedings, other than the prescribed time requirements, in accordance with the Rules.
12. Section 56 of the Ontario Regulations 516/06 under the Residential Tenancies Act, 2006 restricts the alteration of time in 21 circumstances – none of which relate to the payment of the compensation pursuant to section 55.1 of the Act. Given that the Landlord has complied with this section as of the hearing date, I find it appropriate, in this case, to extend the time for the payment of the compensation due under section 55.1 of the Act.
13. 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. The Landlord is unaware of any circumstances that would justify relief from eviction.

14. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of April 30, 2021. The Tenant must move out of the rental unit on or before September 26, 2021.
2. The Tenant shall pay to the Landlord \$5,217.78 (less any amounts already paid to the Landlord), which represents compensation for the use of the unit from May 1, 2021 to September 15, 2021.
3. The Tenant shall also pay to the Landlord \$37.81 per day for compensation for the use of the unit from September 16, 2021 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 26, 2021, the Tenant will start to owe interest. This will be simple interest calculated from September 27, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before September 26, 2021, then starting September 27, 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 Landlord on or after September 27, 2021.



Sonia Anwar-Ali
Member, Landlord and Tenant Board

September 15, 2021
Date Issued

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 March 27, 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.