



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

File Number: LTB-L-001224-21

In the matter of: 25, 11 HARRISFORD ST
HAMILTON ON L8K6L7

Between: Faizal Munshi
Sajeda Munshi

And

Ana Nathaly Portillo
Eliazar Jandres Ramirez

I hereby certify this is a
true copy of an Order dated
June 07, 2022
Landlord and Tenant Board

Landlord

Tenant

Faizal Munshi, Sajeda Munshi (the 'Landlord') applied for an order to terminate the tenancy and evict Ana Nathaly Portillo, Eliazar Jandres Ramirez (the 'Tenant') 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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on May 31, 2022. The Landlord, Sajeda Munshi, the Landlords Legal Representative, Jordan Nieuwhof, the Landlords Daughter, Faaiza Munshi, and the Tenant, Ana Portillo, attended the hearing. The Tenant spoke with Tenant Duty Counsel on the hearing date.

Preliminary Issue:

1. At the onset of the hearing, the Tenant, Ana Portillo, raised an issue regarding whether or not Eliazar Ramirez is a Tenant.
2. Ms. Portillo testified that he no longer lives with her, but he is the father of her children and attends the rental unit regularly in order to maintain a good relationship for the children. He also attends to odd jobs at the Landlords request at the rental unit and the Tenant believed that once the original one-year lease term ended and no new lease was signed, that he is no longer considered a Tenant.
3. The Landlords evidence is that he was a named Tenant on the lease agreement and that there has never been an agreement to remove him from the lease.
4. The Tenant did not dispute that he is a lease holder and that he was never removed as a party.
5. Based on the evidence before me, I find that Eliazar Ramirez is still a named Tenant and therefore he should be included as such in this order.

Determinations:

6. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, I find that the Landlord is entitled to termination of the tenancy.
7. On December 14, 2021, the Landlord gave the Tenant an N12 notice of termination with the termination date of February 28, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter, Faaiza Munshi.
8. The Landlord has compensated the Tenant an amount equal to one month's rent by February 28, 2022. The Landlord waived the rent for the month of February 2022 in lieu of the compensation.
9. At the hearing, the Tenant argued that they were not privy to a letter that was put in their mailbox regarding the February rent being considered compensation for the notice. Submitted into evidence is a copy of a letter dated January 7, 2022 from the Landlords Legal Representatives office that indicates that the Landlord waives rent for the month of February 2022, rather than providing the Tenant with a cheque.
10. Also submitted into evidence is a Certificate of Service from the Landlords Representative, Edward Woods, that certifies the document was placed in the mailbox at the rental unit on January 7, 2022.
11. Although the Tenant disputes ever seeing the letter, the Tenant confirmed that no rent was paid for the month of February and the Landlord made no demand for February rent to be paid, despite the Tenant not having paid it. The Tenant indicated that she could have used the additional funds in the form of a cheque in order to pay the full rent for February and to put money towards savings for a new place.
12. Based on the evidence before me, I find that the Landlord satisfied the requirement of one month's rent when they waived the rent for February 2022.
13. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') by filing with the Board an affidavit sworn by the daughter of the Landlord, Faaiza Munshi, who personally requires the rental unit certifying that she in good faith requires the rental unit for her own personal use for a period of at least one year.
14. At the hearing, Ms. Munshi also testified that she intends on moving into the rental unit for at least a year and that the rental unit is where she grew up and it is closer to public transit and amenities. She further testified that her current residence is shared with her family and that she lacks the necessary privacy in order to work from home and to start her relationship with her partner. She also testified that she can no longer rely on her parents for transportation because of a catastrophic car accident that her mother was involved in. She requires public transit which is not easily accessible from her current residence.
15. At the hearing, the Landlord, Sajeda Munshi, also testified that she requires the rental unit for her daughter and that it was always the plan to have her daughter live in the property when she came of age to do so. She further testified that she can no longer drive her daughter because of her accident and cannot provide her with reliable transportation. She

also testified that she wants to see her daughter leave home in order to start her own life with her partner.

16. It was the Tenants position that the Landlord was serving the notice in bad faith because the Landlord had previously texted her regarding a desire to increase the rent and the Tenant could not afford the increased rent and would not agree to it. Ms. Portillo also indicated that the Landlord told her that if she wouldn't pay the increased rent, that they would sell the property or have their child take over possession of the property. The Tenants did not submit any material evidence in support of her position, but I do note that the Landlord did not dispute that they had demanded increased rent from the Tenant or that they had previously told the Tenant that they would sell the property or have their child move in.
17. The issue before me, was that the Tenant lacked any specific details regarding when the conversation took place and also lacked the evidence that could be scrutinized under cross examination. the Tenant filed no material evidence for the hearing and did not raise the issue with the Landlord under cross examination of the Landlords evidence. I therefore accord less weight to the Tenants evidence and prefer the evidence of the Landlord in that they require the rental unit in good faith for a period of at least one year.

Analysis

18. 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.
19. 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".
20. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

21. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, 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.”

22. Based on the evidence before me and on a balance of probabilities, I find that the Landlords have a genuine intent to occupy the property for the purpose of residential occupation by their daughter for at least one year.

Discretionary Relief from Eviction

23. The Tenants have five children ranging in age from 7 years to 18 years old. The Tenants have lived in the rental unit for over seven years. Ms. Portillo has been unemployed and is currently looking for employment, but has not found anything. The Tenant further testified that her two older children have also been looking for employment, but that she cannot afford to move despite the fact she has been looking for a new place. The Tenant claimed that rent prices have almost doubled and that she is considering relocating to another city in order to afford the rent.
24. The Landlords position is that they require the rental unit before September because the Landlords daughter starts back to university in the fall. It was the Landlords evidence that their daughter had already missed a semester at school because of the privacy issues at home and it would be prejudicial to miss another semester. They require some time before school in order to settle into the property.
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 July 31, 2022 pursuant to subsection 83(1)(b) of the Act.

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 July 31, 2022.
2. If the unit is not vacated on or before July 31, 2022, then starting August 1, 2022, 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 August 1, 2022.

June 7, 2022
Date Issued



Terri van Huisstede
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 February 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.