



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-99943-21

In the matter of: 2, 38 EDWARD STREET
PENETANG ON L9M1K4

Between: Peter Mealing Landlord

and

Amanda Lucas Tenants
Darrell-Morin Downey

Peter Mealing (the 'Landlord') applied for an order to terminate the tenancy and evict Darrell-Morin Downey and Amanda Lucas (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This hearing was held by videoconference on July 15, 2021. The Landlord and the Landlord's representative, Howard Tavroges, attended the hearing. One Tenant, Darrell-Morin Downey, and the Tenants' representative, Erly Bregu, also attended the hearing.

Determinations:

1. On April 20, 2021, the Landlord served the Tenants with an N12 Notice of Termination (N12) with a termination date of October 14, 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 Landlord testified that he currently lives and works in Texas, but his intention is to return to Canada permanently and move into his residence at #2, 38 Edward Street in Penetang for retirement. He also noted that he wanted to return to this residence to spend time with his brother who is gravely ill. The Landlord plans to end his employment in Texas and retire when the current tenancy is terminated at #2, 38 Edward Street. The Landlord also provided a signed declaration dated April 23, 2021, stating his good faith intention to reside at unit 2 for at least one year.

6. The Tenant disputed the Landlord’s genuine intention to occupy the premises by providing text message evidence from January 21 and 22, 2021 with an exchange between the Landlord and Tenant about the Landlord’s intention to sell the rental unit. The Tenant provided no additional evidence regarding the Landlord’s current intention with respect to the rental unit, or that the Landlord’s April 23, 2021 application was not made in good faith.

7. I am satisfied, based on the Landlord’s testimony, that he genuinely intends to live in the unit for at least one year. Therefore, I find that the Landlord in good faith requires possession of the rental unit for the purpose of the 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 Landlord testified that the rent for the period of April 15, 2021 to May 14, 2021 was waived for the purpose of providing the Tenant with one month’s rent compensation. The Tenant confirmed this arrangement through his testimony and advised that he had been compensated one month’s rent.

10. I am satisfied that the Landlord met his 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.


12. The Tenant testified that he conducts most of his business from his current residence, his wife’s employment is close to the current rental unit, and that they have a two-year old daughter. He noted that finding suitable accommodation for his family and business in the current real estate market is very difficult, and that a delayed eviction would be preferable.

13. I find that, although there are challenges for the Tenants in securing alternate accommodations for their family, the Landlord’s early service of the N12 Notice of Termination to the Tenants on April 20, 2021, provided them with more than five months to secure new accommodations before the October 14, 2021 date of tenancy termination. I find that this is a reasonable amount of time for the Tenants to secure another rental unit, and that a delayed eviction beyond October 14, 2021, would not be fair to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of October 14, 2021. The Tenant must move out of the rental unit on or before October 14, 2021.
2. If the unit is not vacated on or before October 14, 2021, then starting October 15, 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 October 15, 2021.

July 30, 2021
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

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Mississauga ON L4Z2G5

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 April 15, 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.