



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-56438-21

In the matter of: 58 FOUNDRY ST
LEAMINGTON ON N8H1C6

Between: Yomna Atkins-Nuzum Landlord

and

Cindy Fox Tenants
Trevor York

Yomna Atkins-Nuzum (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Fox and Trevor York (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This hearing was held by videoconference on December 20, 2021. The Landlord and the Landlord's representative, Christopher Hall, attended the hearing. One Tenant, Trevor York, and the Tenant's representative, Tori-Lee Jenkins, also attended the hearing.

Determinations:

1. On August 10, 2021 the Landlord served the Tenants with an N12 Notice of Termination (N12) with a termination date of October 31, 2021. The N12 seeks termination of the tenancy on the ground that the Landlord requires the rental unit for residential occupation.
2. The Landlord applied to the Board to terminate this tenancy on September 9, 2021. The Landlord has, within two years prior to filing this application, given another notice under section 48 of the *Residential Tenancies Act, 2006* (the "Act") in respect to the same rental unit. On November 18, 2020 the Landlord served the Tenants with an N12 seeking termination of the tenancy on the ground that the Landlord requires the rental unit for residential occupation. The Landlord's application to terminate the tenancy, SWL-47300-20, was dismissed during a Board hearing on August 9, 2021 because the Landlord paid the Tenants one month's rent compensation after the date of termination – not before it.
3. The current N12 was served to the Tenants in response to the dismissed SWL-47300-20 application.
4. The Landlord's representative submitted that this is a month to month tenancy with a monthly rent of \$900.50, and that the Tenants have no rent arrears.

Good faith

5. The N12 was served pursuant to section 48 of the 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 the Landlord required, in good faith, the unit for residential use.
6. 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."
7. 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.
8. The Landlord testified that she will be moving into the unit at 58 Foundry Street in Leamington for her own use for a period of at least one year. Pursuant to s. 71.1 of the Act, the Landlord provided a signed affidavit, dated November 18, 2020 declaring her intent to reside in the rental unit, in good faith, for a period of at least one year.
9. The Landlord testified further that she currently lives in Windsor, but her parents, sisters and brothers all live in Leamington, and that she would like to move to Leamington to live closer to them. The Landlord stated that her employer is in Windsor, but her work is completed on-line, and as a result, she will be able to retain her position. She noted that she will be moving into the rental unit with her three children.
10. The Tenant testified that he believes the Landlord's application to evict him is not made in good faith. He explained that the rental unit is too small and poorly maintained for the Landlord's use – especially when compared with the Landlord's current residence in Windsor. Although the Tenant questioned the Landlord's motives for moving into the rental unit, he did not provide any testimony or documentary evidence to challenge the Landlord's intent to reside in the rental unit for at least one year.
11. On the basis of the evidence provided, I am satisfied that the Landlord genuinely intends to use the rental unit for the residence of her family for at least one year. I am also satisfied that this second N12 to terminate this tenancy was served to the Tenants to ensure they received their one month's rent compensation before the date of termination rather than after it. I therefore find that 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.

Compensation

12. 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.

13. The Landlord testified that cheque #83 in the amount of \$900.50 was provided to the Tenants in July 2021 as one month's rent compensation for the first N12 that was served to the Tenants on November 18, 2020. The Landlord stated that this cheque was retained by the Tenants, and considered by her as payment of the one month's rent compensation for the current N12 served to the Tenants on August 10, 2021. The Landlord testified further that cheque #83 was never cashed, and was stale dated; therefore, wanting to ensure that the Tenants received their compensation, she mailed another cheque to the Tenants in the amount of \$900.50.
14. The Tenant testified that he received cheque #83 for \$900.50 from the Landlord in early August 2021; however, he never cashed it. He understood that this cheque represented one month's rent compensation for the Landlord's first application to terminate his tenancy. The Tenant stated that after the Landlord's first application was dismissed by the Board on August 9, 2021, he destroyed the cheque by tearing it up. The Tenant testified further that he received a second cheque from the Landlord in the amount of \$900.50 for one month's rent compensation on December 9, 2021.
15. On the basis of the evidence provided, I am satisfied that the Landlord met her obligation to pay the Tenants compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act by providing cheque #83 to the Tenants in August 2021. I accept that, without communication from the Tenants, the Landlord believed that cheque #83 had been retained by the Tenants as one month's rent compensation for the second N12. I am satisfied that when cheque #83 was considered stale dated, the Landlord mailed another cheque to the Tenants to ensure that they received their compensation.


Relief from Eviction

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until February 28, 2022 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant testified that he has been looking for another rental unit for more than 18 months, but affordable accommodation is scarce. His financial circumstances are difficult. The Tenant stated that he has a disability from a leg injury that would complicate a potential move. The Tenant noted that his mother, who has health issues, and his brother are also living with him.
18. I find that, although the Landlord in good faith requires possession of her rental unit for the residential occupation of her family, postponing the Tenants' eviction until February 28, 2022 will provide the Tenants, who are struggling financially, with more time to secure a rental unit that is suitable for them and their resident family members. I find that the short delay to the Landlord in taking possession of the rental unit, as a result of this eviction postponement, would not be unfair to the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated on February 28, 2022. The Tenants must move out of the rental unit on or before February 28, 2022.
2. The Tenants shall continue to pay the Landlord monthly rent of \$900.50 until the Tenants vacate the rental unit.
3. If the unit is not vacated on or before February 28, 2022, then starting March 1, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 March 1, 2022.

January 13, 2022
Date Issued


Frank Ebner
Member, Landlord and Tenant Board

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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 September 1, 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.