



Order under Section 69
Residential Tenancies Act, 2006

Citation: Daley v Linton, 2023 ONLTB 26279

Date: 2023-03-22

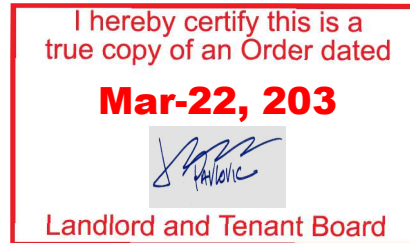
File Number: LTB-L-075856-22
(formerly TNL-24946-20)

In the matter of: BASEMENT -UNIT 1, 10 COLLANUS COURT
ETOBICOKE ON M9W6G5

Between: Gian Daley

and

Fernando Linton



Landlord

Tenant

Your file has been moved to the Landlord and Tenant Board's new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-075856-22

Gian Daley (the 'Landlord') applied for an order to terminate the tenancy and evict Fernando Linton (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, heard via videoconference, was before the Board on June 10, 2021 and November 10, 2021. The Landlord, represented by Ravinder Bassi, a licensed Paralegal, and the Tenant, represented by Kwang-Sheng Wen, a Lawyer – Rexdale Community Legal Services, attended the hearings.

Preliminary Issue:

1. The Tenant representative sought to have the application dismissed on the grounds that the Landlord failed to pay the one month's compensation by the termination date in the notice of termination.
2. The Landlord submits that the one month's compensation was provided to the Tenant in the form of a cheque. The cheque was posted-dated for January 30, 2021 and hand-delivered on January 29, 2021.
3. The Tenant acknowledges that the cheque was hand-delivered by the Landlord but argued it was not given to him until February 1, 2021.

4. The Landlord served the Tenants with a Notice to End Your Tenancy on January 5, 2021 because the Landlord's child requires the rental unit ('N12 Notice'). The termination date on the notice of termination is March 31, 2021.
5. Section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') requires a landlord who has served an N12 Notice to give the tenant compensation in the amount of one month of rent. Section 55.1 requires that the compensation must be paid no later than the termination date in the N12 Notice. In this case, the compensation must be paid no later than January 31, 2021.
6. The Tenant relies on a digital photograph of the cheque to support his position that the Landlord did not give him the cheque until February 1, 2021. I do not believe the fact the photograph is date-stamped February 1, 2021 is enough to establish that the cheque was hand-delivered on that date. I accept the Tenant took the photograph on February 1, 2021. This, however, does little to establish that this was the day the Landlord hand-delivered the cheque.
7. This is a case of he said/he said with the Landlord stating he hand-delivered the cheque on January 29, 2021 and the Tenant stating it was hand-delivered on February 1, 2021. Here, the Tenant needed to persuade me that his version of events was the more probable, i.e. more than 50%. I must weigh up the submissions of the parties and decide which version is most probably true. Having done so, I find the Tenant has not met the required standard.
8. With respect to when the Tenant paid the rent, the Tenant testified that sometimes it was on the 1st and sometimes it was early, on the 28th or 29th. The Tenant was unable to state with any certainty when he paid the rent for February 2021 yet was able to state that the Landlord hand-delivered the cheque on February 1, 2021.
9. Having considered the submissions of the parties and the evidence before me, I am satisfied on a balance of probabilities that the Landlord paid the one month's compensation as required under the Act.

Determinations:

1. For the reasons that follow, I am satisfied on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of his daughter's residential occupation for a period of at least one year.
2. On November 28, 2019, the Landlord served the Tenant with a Notice to Terminate a Tenancy at the End of the Term for Landlord's Own use ('N12 Notice'). The termination date in the N12 Notice is January 31, 2019. The N12 Notice indicates that the Landlord's daughter intends to move into the rental unit for the purpose of residential occupation.
3. The issue to be determined is whether the Landlord's spouse "in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at

least one year”, as per subsection 48(1) of the *Residential Tenancies Act, 2006* (the ‘Act’).

4. The leading case on the determination of good faith in a landlord’s own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a residence. The test is not whether a landlord needs the unit or whether a landlord’s desire to possess the rental unit is reasonable.
5. In a sworn affidavit dated February 23, 2020, the Landlord’s daughter Jaspreet Kaur Daley (‘JKD’) explained that she will be moving into the rental unit and that she would be residing in the rental until for more than one year.
6. JKD provided testimony at the hearing confirming her intentions. She stated that her parent s had health concerns, her mother is older and requires assistance with appointments and shopping. It would be a logical move to move closer to her parents. And although there are four bedrooms upstairs, she does not want to be in the bedroom beside her parents due to privacy reasons, the unit downstairs is a sperate space but at arms length. No evidence was presented to sufficiently challenge JKD’s intentions.
7. It was the position of the Tenant that what the Landlord really wants to do is to evict him as he was unsuccessful in previous applications before the Board. In my view, the fact the Landlord previously chose to exercise his rights by serving notices of termination and filing applications with the Board is not evidence of bad faith.
8. The Tenant also submitted that the Board must deny the eviction pursuant to subsection 83(3)(a) of the Act because the Landlord is in serious breach of the Landlord’s responsibilities under this Act or of a material covenant in the tenancy agreement as a result of multiple alleged illegal entries throughout the tenancy.
9. The wording in s. 83(3)(3)(a) is in the present tense meaning the serious breach must be ongoing at the time of the hearing before the Board. There was no evidence before me to suggest that the alleged illegal entries were persistent or ongoing. Accordingly, I am not satisfied the Landlord is in serious breach of his responsibilities under the Act which would warrant a denial of the eviction.
10. I accept the evidence of the Landlord that his daughter genuinely wants to move into the rental unit. The Landlord’s evidence was corroborated by his daughter who testified that she is a non-practicing Lawyer that intends to move into the rental unit with her husband, to be close to and provide assistance to her mother that is experiencing health issues. I am also satisfied that the daughter genuinely intends to occupy the unit for at least one year.

Request for Relief

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 for the reasons that follow.
12. The Tenant's representative requested that the Board exercise discretion in deciding this case. The Tenant has "ties" to the area, he grew up in the area, his Doctor and bank are close by as well as his medial specialist. The rent he currently pays is cheaper than other areas in the Greater Toronto Area. The Tenant also has a learning disability and does not have anyone that he is able to move in with; his only alternative is the shelter system, which he is afraid of, and essentially, he will end up on the streets. The Tenant's representative also submitted that there is currently a pandemic and that people are dying even if they are vaccinated; if the Tenant is evicted this may essentially be a "death warrant".
13. Having considered the Tenant's circumstances, I am of the opinion that the Landlord's intentions were clear, that they intend to utilize their property for the use of their family. Although the Tenant has submitted some persuasive arguments in granting relief, I have also considered the Landlord's circumstances. The Tenant has had ample time to locate alternative housing since the hearing was held, circumstances have changed and as such I will not be granting any additional time for the Tenant to move out.

Daily Compensation

14. The Landlord claimed compensation for each day the Tenant remained in the unit after the termination date January 31, 2020.
15. The lawful rent is \$500.00. It is due on the 1st day of each month.
16. Based on the Monthly rent, the daily rent/compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
17. The Tenant was required to pay the Landlord \$ 18,823.80 in daily compensation for use and occupation of the rental unit for the period from February 1, 2020 to April 2, 2023. The Landlord is to deduct any payments that the Tenant has made for this rental period.
18. The Landlord did not collect a last month's rent deposit.

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 April 2, 2023.
2. The Tenant shall pay to the Landlord \$18,823.80, which represents compensation for the use of the unit from February 1, 2020 to March 22, 2023. The Landlord shall deduct any payments that the Tenant has made between February 1, 2020 and March 22, 2023.

3. The Tenant shall also pay to the Landlord \$16.44 per day for compensation for the use of the unit from March 23, 2023 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 April 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 3, 2023 at 5.00% annually on the balance outstanding.
5. If the unit is not vacated on or before April 2, 2023, then starting April 3, 2023, 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 April 3, 2023.

March 22, 2023
Date Issued



Peter Pavlovic
Member, Landlord and Tenant Board

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Toronto ON M2N5X5

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 May 5, 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.