



Order under Section 69
Residential Tenancies Act, 2006

File Number: TEL-12271-20

In the matter of: 14501 COUNTY 2 ROAD
CRAMAHE ON K0K1H0

Between: Brennan McMahon Landlord

and

Stella Olmstead Tenant

Brennan McMahon (the 'Landlord') applied for an order to terminate the tenancy and evict Stella Olmstead (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 via videoconference on April 27, 2021. The Landlord, the Landlord's legal representative, Sam Ursino and the Tenant attended to hearing. The Tenant had an opportunity to speak to Tenant Duty Counsel before the hearing.

Determinations:

1. The Landlord applied for an order to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit for the purpose of his residential occupation. The N12 notice was served on the Tenant on August 21, 2020 by handing it to her in person. The termination date in the N12 is October 31, 2020.
2. This is a month to month tenancy.
3. The Landlord paid the Tenant compensation equal to one month's rent (\$1,000.00) on August 20, 2020. The Landlord submitted into evidence correspondence to the Tenant dated August 20, 2020 advising her that he was waiving September 2020 rent. I find that this waiver of the payment of rent for one month to be compensation pursuant to section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
4. The Landlord also filed an Affidavit signed on August 21, 2020 indicating that he requires the unit for his own personal residential occupation for a minimum of one year.

Good Faith

5. The only remaining issue to be determined is whether the Landlord in good faith requires possession of the rental unit.
6. The Landlord bears the obligation to prove the good faith requirement and is required to establish that she genuinely intends to live in the rental unit for at least one year. The Landlord's motives are only relevant as evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists [*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct); *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)].
7. The Landlord testified that when he purchased the unit in May 2020, he was seeking vacant possession for his own residential occupation. When the Tenant did not vacate, he continued residing at his current home. Located next to the rental unit is his business and he wants to reside in the unit so that he could be close to it. He also testified that he would reside in the unit for a period of at least one year. He testified he formed the intention to reside in the unit since he purchased it.
8. The Tenant disputed that the Landlord in good faith requires possession of the rental unit. She testified that she was told by others that the Landlord wanted to bulldoze the rental unit to use it as a parking lot for his trucks for the business. In cross, the Landlord denied this assertion.
9. I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. I am satisfied by the Landlord's evidence that he formed the intention to reside in the unit when he purchased it in May 2020. I am also satisfied by his evidence that he genuinely intends to reside in the unit for one year. I am not persuaded by the Tenant's evidence that the Landlord is seeking to terminate the tenancy to bulldoze the unit to create a parking lot. The Tenant did not lead any other evidence, other than her testimony, that others were told of this alleged plan. I am therefore satisfied on the balance of probabilities, that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation and he genuinely intends to reside in the rental unit and for a period of one year.

Section 83 Considerations

Section 83(3) Mandatory Refusal of Eviction

10. The Tenant testified that she had issues with her well at her rental unit which she alleged were caused by employees of the Landlord's business. The well issues caused her water to be cut off for ten days. Pursuant to section 83(3)(a), the Board shall refuse to grant an application where the Landlord is in serious breach of the Landlord's responsibilities under the Act or any material covenant in the tenancy agreement. While the Tenant did not raise this issue regarding this section of the Act, I find it prudent to consider this evidence for procedural fairness.

11. In order to engage the mandatory refusal of eviction under subsection 83(3)(a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. The evidence before me was that the water was restored after ten days and that the issue was no longer ongoing as of the date of the hearing. The issues with maintenance can be properly dealt with in a Tenant application. The Tenant may wish to contact her local legal clinic to get advice in that regard.

Section 83(2)

12. 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 June 30, 2021 pursuant to subsection 83(1)(b) of the Act.
13. The Tenant testified that she has been residing in this unit for three years. She has been looking for other units that she could afford since the issues with the well began but this has been difficult, given that she has dogs and not a lot of Landlords will accept them. She testified she began taking steps towards moving by storing some of her items in a storage unit. She is unsure of how long it would take to find another rental unit. The Landlord disputed a postponed termination, given that the Tenant has had ample opportunity to move during the delays with COVID-19. Further, it would be prejudicial to the Landlord for this tenancy to continue as the Tenant is in arrears of rent and utilities.
14. In consideration of the above, I find that the postponed termination date of June 30, 2021 is appropriate in these circumstances. While I appreciate the prejudice to the Landlord in continuing this tenancy, I find the Tenant has been taking steps to vacate the unit and should be given some time to organize her move.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of June 30, 2021. The Tenant must move out of the rental unit on or before June 30, 2021.
2. The Tenant shall also pay to the Landlord \$32.88 per day for compensation for the use of the unit from May 29, 2021 to the date the Tenant moves out of the unit.
3. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2021, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2021 at 2.00% annually on the balance outstanding.
4. If the unit is not vacated on or before June 30, 2021, then starting July 1, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. 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 July 1, 2021.

May 28, 2021
Date Issued



Camille Tancioco
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 January 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.

This order terminates the tenancy and permits the Landlord to file the order with Court Enforcement Office (Sheriff) to evict the Tenant. However, as of the date this matter was heard, the Sheriff cannot enforce this order as a result of Ontario Regulation 266/21 made under the *Emergency Management and Civil Protection Act* on April 8, 2021. The Tenant cannot be evicted from the rental unit while this regulation is in force. Eviction by the Sheriff may occur after the regulation is removed by the Ontario Government.