



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

Citation: Kaur v Cuyacot, 2023 ONLTB 18504

Date: 2023-02-09

File Number: LTB-L-016478-22

In the matter of: Basement, 1599 MEADOWFIELD CRES
MISSISSAUGA ON L5M4T5

Between: Baljinder Kaur and Sarabjit Singh Landlord

And

Hans Cuyacot and Joan Seewald Tenant

Baljinder Kaur and Sarabjit Singh (the 'Landlord') applied for an order to terminate the tenancy and evict Hans Cuyacot and Joan Seewald (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 October 20, 2022.

The Landlord's legal representative, Shikha Kapoor, and the Landlord, attended the hearing.

The second named Tenant attended the hearing.

Determinations:

1. On March 3, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 9, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
2. The Tenant was in possession of the rental unit on the date the application was filed with the Board.
3. The Tenant is still in possession of the rental unit.
4. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required stating that he intends to move into the rental unit for no less than one year.

5. The Landlord has compensated the Tenant an amount equal to one month's rent by May 9, 2022 and was paid to the Tenant on May 2, 2022.
6. The Tenant was required to pay the Landlord \$5,391.78 in daily compensation for use and occupation of the rental unit for the period from May 10, 2022 to October 20, 2022.
7. Based on the Monthly rent, the daily compensation is \$32.88. This amount is calculated as follows: \$1,000.00 x 12, divided by 365 days.
8. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from to October 20, 2022 .
9. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

GOOD FAITH

10. The N12 was served pursuant to section 48 of the Residential Tenancies Act, 2006 (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 Notice, he required, in good faith, the unit for residential use for a period of at least one year.
11. 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."
12. The rental unit is a basement apartment. The Landlord lives in the main and upper floor of the house. The house is a four bedroom two bathroom dwelling with a kitchen and living room.
13. The Landlord submitted an affidavit with his application that he in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.
14. The Landlord testified he and his wife live in the main and upper floor of the house. The Landlord's daughter, her husband and their three children ages one and a half, two and six years of age live with the Landlord. The Landlord requires the rental unit in the basement in order to have more room for the family to live.

15. I do not consider that the Tenant substantively challenged the Landlord's good faith intention, as the Tenant's claim is based on her opinion the area the family lives in now should be enough room for everyone and there is no need for the Landlord to evict her. The ultimate test is the genuineness of the Landlord's intention, and while the Tenant may be of a different opinion, the Landlord has provided substantial evidence to prove the reason for his intent to occupy the basement rental unit, given the number of people currently living in the main and upper floor.
16. 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.
17. The Landlord requested a standard order.

RELIEF FROM EVICTION

18. The Tenant does not have any young children or persons with special needs living with her. At the time of the hearing the Tenant requested approximately sixty (60) days for an extended eviction. While the Landlord may be inconvenienced by a delayed eviction, I weighed the prejudice to the Landlord against the impact to the Tenant on having to find new housing to meet her needs. As the Landlord has met all the requirements under the Act for his application, I am granting the Landlord his request for eviction however I am granting the Tenant an extended eviction order. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
19. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
20. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, 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 April 1, 2023.

4. The Tenant shall pay to the Landlord \$4,391.78, which represents compensation for the use of the unit from May 10, 2022 to October 20, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$32.88 per day for the use of the unit starting October 21, 2022 until the date the Tenant moves out of the unit.

February 9, 2023

Date Issued

Greg Brocanier

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 October 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.