



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-23419-21

In the matter of: 9 HIGHLAND AVENUE
FORT ERIE ON L2A2X6

Between: Tammy Gaboury Landlord

and

Deniz Kanbal Tenants
Tayanc Kanbal
Ugur Kanbal

Tammy Gaboury (the 'Landlord') applied for an order to terminate the tenancy and evict Deniz Kanbal, Tayanc Kanbal and Ugur Kanbal (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 application was heard by videoconference on October 20, 2021. The Landlord and the Landlord's legal representative, Sidney Sheridan, attended the hearing. Sami Tayanc Karbal (S.K.) attended the hearing on behalf of the Tenants and occupants.

Determinations:

1. I find that the Landlord in good faith requires possession of the rental unit. In light of all of the circumstances, I am delaying the eviction until February 15, 2022.

Rental unit and identity of the Tenants

2. As a preliminary issue the Tenants argued that the Landlord's notice of termination does not correctly identify the rental unit and does not correctly identify the Tenants.
3. S.K. testified that the property is a duplex consisting of two rental units, that the property has two separate Hydro meters, and that he initially only occupied the lower unit. He conceded that the entire house has been occupied by his family for over a year. The Landlord did not dispute that the property is a duplex.
4. S.K. also testified that there are seven tenants, not three as identified by the Landlord.
5. The Landlord argued that the Landlord's documents correctly identify the rental unit as the entire property, and correctly names the three Tenants. She argued that the three

Tenants occupied the entire two-unit property pursuant to their agreement with the previous owner.

6. The Landlord submitted a copy of the lease signed by the Tenants and the previous owner of the rental unit, Robert Christopher D'Ambrosio. The Lease agreement identifies the rental premise as the house located at 9 Highland Avenue, Fort Erie and the Tenants as Deniz Kanbal, Tayanc Kanbal and Ugur Kanbal. It recognizes 4 other people as occupants. The lease states the Tenants shall be responsible for electricity for lower unit and the Landlord shall be responsible for electricity for the upper unit. The lease was signed by S.K. on behalf of the Tenants on June 1, 2020. The Tenants did not dispute the authenticity of the lease.
7. Based on all of the evidence adduced at the hearing I find that it is more likely than not that the Landlord's notice of termination correctly identifies the Tenants and the rental unit. The lease is unambiguous in that the entire house is the rental unit and that there are only three tenants. The lease is consistent with the Landlord's position. While the Tenants initially only occupied one part of the property, it is clear that they later occupied the entire house pursuant to the new lease they signed on June 1, 2020. I find that as of that date the two rental units became one, with Deniz Kanbal, Tayanc Kanbal and Ugur Kanbal as the Tenants. The Landlord stepped into the shoes of the previous landlord when she purchased the property.

Notice of termination, compensation and deposit

8. On July 23, 2021 the Landlord served the Tenants with a notice of termination N12 with the termination date of September 30, 2021.
9. It was the Landlord's uncontradicted evidence that the Landlord compensated the Tenants with a cheque for \$2,750.00, being the amount equal to one month's rent. As required by the *Residential Tenancies Act, 2006*, (the 'Act'), this compensation was provided prior to the termination date of September 30, 2021.
10. The Landlord collected a rent deposit of \$2,750.00 from the Tenants and this deposit is still being held by the Landlord.
11. Interest on the rent deposit is owing to the Tenants for the period from June 1, 2020 to September 30, 2021.

Good faith

12. The Landlord testified that she purchased the rental unit in November 2020 with the intention to convert the rental unit into the primary residence for her and her daughters. She testified that she made her intention known to the Tenants at the time of purchasing the property.
13. The Landlord testified that she wishes to move into the rental unit with her daughters and their families. The Landlord's older daughter was pregnant at the time the rental unit was purchased and now has a young child. The Landlord plans to live downstairs while her

daughters live upstairs. She testified that the rental unit is perfect for their living arrangement as it provides separate space within the same home for the families. Living in the rental unit will allow her daughter and her family to get their feet on the ground. The Landlord plans to reside at the rental unit indefinitely. The Landlord's testimony was not seriously challenged or undermined on cross-examination.

14. I find that it is more likely than not that the Landlord in good faith requires possession of the rental unit for the purposes of residential occupation.

Relief from eviction

15. 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 15, 2022 pursuant to subsection 83(1)(b) of the Act.
16. The Tenant's evidence was that there were some issues with the tenancy and the rental unit. The most serious of these issues was harassment, which S.K. conceded, stopped by July 8, 2021. Based on S.K.'s evidence I am not satisfied that the circumstances would warrant mandatory refusal of eviction under s. 83(3)(a) of the Act. The Tenants may bring their own application(s) to address their concerns with the tenancy or the rental unit.
17. S.K. requested that eviction be delayed until May 1, 2022. He testified that he now has a 1-month old child and that moving two households consisting of 8 people will take time and will be expensive. He testified that he has been looking for a new place but has been unable to find a suitable one. S.K. testified that the only place he found that might work will not be available until May 1, 2022.
18. The Landlord opposed any delay in eviction and argued that any delay will be prejudicial to her.
19. The Landlord testified that she has been staying at Air B'N'B paying some \$3,000 a month waiting for the Tenants to vacate the rental unit. She testified that she has been stressed out as a result and that her daughter has not had a nursery for her newborn child.
20. The Landlord argued that the Tenants have had since November 2020 to find a new place and pointed out that the Tenants even received a previous (invalid) N12 notice.
21. I will not grant the Landlord's request for immediate eviction. This application is not based on any fault of the Tenants. While the Landlord is entitled to take possession of her property in the circumstances, it would not be fair to evict 8 people with 11-days' notice based on this no-fault application. The Tenants were entitled to wait for the hearing to test the Landlord's case and need some time to find a new place to live upon receipt of this order.
22. I will also not grant the Tenants' request for a very lengthy delay to the end of April 2022. The Tenants' and the Landlord's circumstances are similar. Both have large families with

one young child. The Landlord is experiencing stress and is incurring expenses while waiting to move into the rental unit and it would be unfair to require the Landlord to wait for another 4 months.

23. Having considered all of the circumstances, I find that it would not be unfair to delay eviction until February 15, 2022.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated, as of February 15, 2022. The Tenants must move out of the rental unit on or before February 15, 2022.
2. The Tenants shall pay to the Landlord \$5,473.65, which represents compensation for the use of the unit from October 1, 2021 to December 30, 2021, less the rent deposit and interest the Landlord owes on the rent deposit. Any payments made by the Tenants between October 1, 2021 and December 30, 2021 shall be subtracted from this amount.
3. The Tenants shall also pay to the Landlord \$90.41 per day for compensation for the use of the unit from December 31, 2021 to the date they move out of the unit.
4. If the Tenants do not pay the Landlord the full amount owing on or before January 10, 2022, they will start to owe interest. This will be simple interest calculated from January 11, 2022 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before February 15, 2022, then starting February 16, 2022, 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 February 16, 2022.

December 30, 2021

Date Issued

Southern-RO
119 King Street West, 6th Floor
Hamilton ON L8P4Y7



Vladimir Nikitin
Member, Landlord and Tenant Board

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 August 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.