



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-22533-21

In the matter of: 599 BRAEMORE ROAD
BURLINGTON ON L7N3E4

Between: Yajun (aka Michael) Jing Landlord

and

Carla Young Tenant

Yajun (aka Michael) Jing (the 'Landlord') applied for an order to terminate the tenancy and evict Carla Young (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 September 22, 2021, and commenced at 11:05 a.m.

The Landlord and the Tenant attended the hearing. Also, in attendance were the Landlord representative, Rong Wei Yu (Alec), and Mandarin interpreter, Yan Yan Su.

The Tenant had an opportunity to consult with Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

1. On June 4, 2021 the Landlord gave the Tenant an N12 Notice to End a Tenancy, with a termination date of August 31, 2021, on the grounds that the Landlord required possession of the rental unit for the purpose of residential occupation by the Landlord and his spouse.

Good faith

2. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (Act). Section 48(1) requires that in order to be successful in this application, the Landlord must establish that the Landlord required in good faith, requires the rental unit for residential occupation for a period of at least one year.

3. 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."
4. 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."
5. The Landlord and his spouse each provided declarations stating that they require the rental unit for residential occupation for a period of at least one year.
6. The Landlord testified at the hearing that he and his spouse were confronted with significant financial obligations at their current place of residence and are intending to sell their home and move into the rental unit.
7. The Landlord's spouse, Lina Zhang, also gave oral testimony affirming the declaration which she had submitted to the Board.
8. The Landlord representative submitted that the Landlord was not advertising the rental unit for lease and had not shown the rental unit to any prospective new Tenants.
9. The Tenant testified that she did not feel the Landlord was acting in good faith and did not show genuine intent that he was planning to move into the rental unit with his spouse. She claimed the declaration was submitted as a result of her request for proof of the Landlord's intent to move into the rental unit.

Analysis

10. The Landlord's evidence establishes, on the balance of probabilities, a genuine intent to live in the unit for at least one year. I accept the testimony given by the Landlord's spouse about their financial burden associated with their current residency. While the Tenant asserted the Landlord was not acting in good faith, there is no evidence on the record to suggest this is the case. Therefore, I find that the Landlord in good faith requires the rental unit for residential occupation for a period of at least one year.

Compensation

11. 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.

12. The Landlord attempted to pay the Tenant compensation equal to one month's rent, \$2200.00, via Electronic Money Transfer (EMT), on August 24, 2021.
13. The Tenant testified, that she had not accepted the EMT, as of the date of this hearing, claiming it was sent to an incorrect email address and that she was not going to accept it until the hearing was held.
14. I am satisfied that the Landlord made a good faith attempt to pay the required compensation by the termination date in the N12 notice. However, the Tenant did not accept the payment. The tenancy will terminate on the condition that the Landlord make the payment by October 31, 2021.

Relief from Eviction

15. 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 December 31, 2021, pursuant to subsection 83(1)(b) of the Act.
16. The Tenant is a single-mother, with two children (3 years old and 15 years old) living with her in the rental unit, another child (11 years of age), who is subject to a custody agreement, where half of the time, this child also lives in the rental unit. Her 18-year-old lives with her former spouse.
17. The Tenant expressed her concern that her children are in their current semester at school, and it would be very difficult to find a new residence in the immediate catchment area. She further testified, that she had recently purchased a new home, pre-construction, that would not be ready until 2023.
18. The Tenant testified, that her only other alternative was to move into her mother's home as a worst-case scenario, which is not near the school.
19. It would not be unfair grant an extension of time. Of particular significance, in this analysis, is the well-being of the children residing in the rental unit and having already commenced their school semester.

It is ordered that:

1. The Landlord shall pay the Tenant compensation in the amount of \$2200.00 by no later than October 31, 2021.

- 2. If the Landlord pays the Tenant compensation in the amount of \$2200.00 by October 31, 2021, the tenancy between the Landlord and the Tenant is terminated, as of December 31, 2021. The Tenant must move out of the rental unit on or before December 31, 2021. If the Landlord does not comply with paragraph 1 above the tenancy will not terminate and Tenant can continue living in the rental unit
- 3. If the unit is not vacated on or before December 31, 2021, then starting January 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 January 1, 2022.

October 12, 2021
Date Issued



Steven Mastoras
 Member, Landlord and Tenant Board

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

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 July 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.