



Order under Section 69
Residential Tenancies Act, 2006

File Number: SOL-22565-21

In the matter of: BASEMENT, 2167 BLACKFOREST CRESCENT
OAKVILLE ON L6M4T7

Between: Mona Sawhney Landlord

and

Ali Hassan Tenants
Farah Ali

Mona Sawhney (the 'Landlord') applied for an order to terminate the tenancy and evict Ali Hassan and Farah Ali (the 'Tenants') because the Landlord required 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 via videoconference on September 22, 2021. The hearing commenced at 10:01 A.M.

The Landlord and one of the Tenants, Mr. Ali Hassan, attended the hearing. Mr. Hassan declined the opportunity to access Tenant Duty Counsel.

Determinations:

1. On April 19, 2021 the Landlord gave the Tenant an N12 Notice to End a Tenancy with a termination date of July 20, 2021, on the grounds that the Landlord required possession of the rental unit for the purpose of residential occupation by the Landlord's daughter, Ms. Kavya Sony.
2. I am satisfied that the specified termination date of July 20, 2021 complies with section 48(2) of the *Residential Tenancies Act, 2006* (Act) as each rental period for this tenancy runs from the 21st day of the month to the 20th day of the following month. The parties signed a fixed term lease which ended on July 20, 2021, meaning this is now a month-to-month tenancy.
3. The Landlord collected a rent deposit of \$1,850.00 from the Tenants and this deposit is still being held by the Landlord.

4. The Landlord provided a copy of a cheque dated June 20, 2021, payable to the Tenant for compensation equal to one month's rent, in the amount of \$1850.00.

Good faith

5. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (Act). Section 48(1) requires that 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.
6. 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."
7. 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."
8. The Landlord, her daughter and her 21-year-old son all currently live in the upper floor(s) of the residential complex. The basement rental unit occupied by the Tenant has two bedrooms and is approximately 700-800 square feet
9. The Landlord and her daughter each provided testimony that Ms. Sony intends to move into the basement rental unit for a minimum period of one year, while she begins her preparation for medical school exams. The Landlord also provided a written declaration from Ms. Sony confirming her intention to move into the residential unit for a minimum of one year.
10. In her oral testimony, Ms. Sony advised that she required a greater degree of privacy to pursue her studies and that she genuinely intends to occupy the rental unit.
11. The Tenant testified that he and the Landlord had an argument in March of 2021 about the rent amount. Specifically, he testified that the disagreement related to a proposed rent increase to \$2200.00 per month, from the current \$1850.00 per month.
12. The Tenant claimed that the Landlord was not acting in good faith, when she served the N12 Notice on April 19, 2021, that it was as a result of his refusal to accept the alleged

increase in rent, and that it was contrary to a Provincial decision to freeze any rent increases in Ontario.

13. The Landlord disputed the Tenant's interpretation of this disagreement. The Landlord claimed this was a misunderstanding during the Tenant's cross examination and that she had not intended to increase the rent to the Tenant.
14. The Tenant testified that he and his wife, along with two young children reside in the rental unit and indicated his concern with the current school semester and how an eviction may adversely impact their school year.

Analysis

15. Based on all the evidence presented, and on the balance of probabilities, I am satisfied that the Landlord's daughter genuinely intends to move into the rental unit. While the Landlord may also have additional motives for selecting the rental unit, this does not affect the good faith of the Landlord's notice.
16. The oral testimony of the Landlord's daughter, was convincing in that she expressed a genuine desire to reside in the rental unit for a minimum of one year, as she pursued her studies at McMaster University and preparations for her medical school admissions test. I find, therefore, that the Landlord in good faith, requires the rental unit for the purpose of residential occupation for a period of at least one year.

Compensation

17. 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.
18. The Landlord has provided a copy of a cheque dated June 20, 2021 with respect to compensation, claiming it was given directly to the Tenant, in the amount of \$1850.00. At the time of the hearing, it remained unclear as to whether the cheque had been deposited by the Tenant.

Relief from Eviction

19. 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 Dec. 31, 2021 pursuant to subsection 83(1)(b) of the Act.
20. The Tenant and his family, with two young children, are currently in the school semester and would find it to be very difficult to relocate during the school semester.
21. 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. Further, while I accept the Landlord's daughter wants more privacy, I do not find that the Landlord has an urgent need to occupy the rental unit.

It is ordered that

1. The tenancy between the Landlord and the Tenants is terminated, as of December 31, 2021. The Tenants must move out of the rental unit on or before December 31, 2021.
2. The Tenants shall pay to the Landlord \$60.82 per day for compensation for the use of the unit from Dec. 21, 2021 to the date they move out of the unit.
3. Last month's rent shall be applied to the final month of the rental term, together with any accrued interest.
4. 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.
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 January 1, 2022.

October 12, 2021
Date Issued



Steven Mastoras
Member, Landlord and Tenant Board

Southern-RO
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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.

