



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

Citation: Pasalic v Wojtyra, 2023 ONLTB 31159

Date: 2023-04-11

File Number: LTB-L-022254-22

In the matter of: 1060 ELM AVE
WINDSOR ON N9A5H7

Between: Emir Pasalic

And

Magda Wojtyra
Marc Ngui



Landlord

Tenants

Emir Pasalic (the 'Landlord') applied for an order to terminate the tenancy and evict Magda Wojtyra and Marc Ngui (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 20, 2023. The Landlord, their representative, S.Kapoor, the Tenants, and their representative S. Pal Ramos attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is granted, and the tenancy will terminate.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On April 15, 2022, the Landlord gave the Tenants an N12 notice of termination by mail. Accounting for the 5 days for mailing the notice is deemed served April 20, 2022, with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlords filed a declaration with the Board supporting their intentions to move into the rental unit and reside there for a period of at least one year.

5. The Landlords collected a rent deposit of \$1,050.00 from the Tenants and this deposit is still being held by the Landlord.
6. 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

Compensation:

7. For the following reasons, I find that the Landlords have compensated the Tenants an amount equal to one month's rent, in accordance with section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').
8. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48".
9. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination.
10. The Tenants submitted that they never received the compensation as required by the Act.
11. The Landlord's legal representative stated that she sent a letter and a cheque equal to one-month's rent to the Tenants by regular mail. At the hearing a copy of this letter was admitted into evidence with dated June 16, 2022, and clearly refers to a cheque being attached.
12. Subsection 191(1)(f) deems that a notice or document is sufficiently given to a person other than the Board provided that they mail the document. I find that a cheque falls within the meaning and purview of "document" as defined by the Act.
13. Now although the Act may define that the document was sufficiently given, it does not resolve the issue of whether the compensation was in the Tenants' possession. Pursuant to section 83(4) of the Act, the Board shall not issue an eviction order if the landlord has not complied with paying the compensation. I stood the matter down at the hearing so that the Landlords could attempt, once again, to pay the Tenants the compensation. I received confirmation by the Tenants that they had received the compensation from the Landlords. Therefore, I find that the Landlord has compensated the Tenant an amount equal to one month's rent as required by the Act.

Does the Landlord Genuinely Intend to Move into the Rental Unit?

14. The first question to be answered on an application like this is whether or not the Board believes the Landlords genuinely intend to move into the rental unit.
15. The Landlord testified that the reason for needing the rental unit is that his family currently resides in Mississauga in a two-bedroom apartment. His circumstances have changed since obtaining a new job in April 2022, based out of Windsor.
16. The Landlord testified that he is currently commuting from Windsor and Mississauga on average 3-4 days a week, which means he is 4 hours away from family and this is strenuous on the family.

17. The rental unit is a detached home in Windsor, which would be more space for their two minor children and a larger outside space in the backyard that the family can avail themselves of. The Landlord's wife works perinatally from home and therefore relocating for her is not an issue.
18. The Tenants submitted that they believed that the Landlord has served them the notice of termination in bad faith. They say that they don't believe the Landlord will move into the rental unit because there are outstanding repairs that need to be completed (roof repair/leak, and drafty windows) and that the Landlord has threatened to demolish the house rather than move in.
19. Further to the above the Tenants relied on a work order from the City of Windsor and communications between them and the Landlord on January 13, 2022. The work order confirms the issue with respect to the roof leak. The communications show that the Landlord was openly communicating with the Tenants regarding issues pertaining to the rental unit and the possibility of demolishing rather than doing the repairs. It is clear from reviewing the messages, that it was clear that the Landlord was simply exploring different options.

ANALYSIS

20. The Courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a Landlord seeking possession of a rental unit for the purpose of residential occupation by the Landlord.
21. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
22. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
23. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

"We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."

24. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
25. Albeit the outstanding maintenance issues or previous conversations may have been an underlying motive to serving the notice of termination, I do not find that this on its own is indicative that the Landlord does not have a genuine intention to occupy the rental unit. I am of the view that it is more likely than not that the notice was served due to a change in the Landlord's circumstances and finding new employment in a new city.
26. I am satisfied that on a balance of probabilities the Landlords genuinely intend to move into the rental unit. Their testimony was creditable and therefore reliable. I am satisfied that the Landlords have met the "good faith" requirement as set out in the Act.
27. The parties agree that the Tenants were required to pay the Landlord \$6,438.00 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to January 20, 2023.
28. Based on the Monthly rent, the daily compensation is \$35.28. This amount is calculated as follows: \$1,073.00 x 12, divided by 365 days.
29. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
30. The Landlord collected a rent deposit of \$1,050.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$63.03 is owing to the Tenant for the period from January 6, 2019 to January 20, 2023.
31. 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.

RELIEF FROM EVICTION

32. During the hearing, the Tenants argued the application ought to be denied under sections 83(3) (a), (b), and (c) of the Act, which state as follows:
 - (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that ...
 - (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
 - (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
 - (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

83(3)(a) Submissions

33. The Tenant submitted that the Landlord was in serious breach of their responsibilities under the Act because of the outstanding repair issues with respect to the windows, the roof leak, issues pertaining to the back door, and the possibility of mold. Although there is no dispute between the parties that there are outstanding maintenance concerns, after considering the evidence and submissions of the parties, I am satisfied that this is not a “serious breach” within the meaning of s. 83(a) and decline to deny eviction on this basis. This finding is not meant to preclude the Tenant from pursuing a maintenance claim in an application before the Board.

83(3)(b) & (c) Submissions


34. The Tenant testified that she made a complaint to the City of Windsor and property standards, due to the inactions of the Landlord in addressing the unit’s maintenance concerns
35. The evidence before me was that after the Tenants made a complaint to property standards, who conducted an inspection in March 2022 and issued a work order on or about March 14, 2022. Shortly after this the Tenants received the notice of termination.
36. I am not satisfied that the application was brought because the Tenants complained to the city of Windsor or because they asserted their rights. As already stated, I am satisfied that the application was brought because the Landlord intends in good faith to live in it for at least one year. As a result, I decline to dismiss the application on the basis of s. 83(3)(b).
37. 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, 2023 pursuant to subsection 83(1)(b) of the Act.
38. At the hearing the Tenants requested 6 months to find another place. They submitted that due to their personal finances and current rental housing marking- finding a place is extremely difficult.
39. I acknowledge the fact that the Landlord has been waiting since April 2022, to obtain possession of the rental unit. However, their current housing situation is not in jeopardy, unlike that of the Tenants, and I accept the Tenant’s evidence regarding the significant challenges she will experience as a result of the eviction.

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 June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 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 July 1, 2023.
4. The Tenant shall pay to the Landlord \$6,438.00, which represents compensation for the use of the unit from August 1, 2022 to January 20, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$35.28 per day for the use of the unit starting January 21, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.
8. If the Tenants do not pay the Landlord the full amount owing on or before April 22, 2023, the Tenants will start to owe interest. This will be simple interest calculated from April 23, 2023 at 6.00% annually on the balance outstanding.

April 11, 2023
Date Issued



Curtis Begg
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 January 1, 2024 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.