



Order under Section 69
Residential Tenancies Act, 2006

File Number: CEL-99183-21

In the matter of: 22 SAINT CLAIR STREET
COLLINGWOOD ON L9Y3Z1

Between: Mervin Buck Landlords
Gayle Buck

and

Jasmin Brown Tenant

Mervin Buck and Gayle Buck (the 'Landlord') applied for an order to terminate the tenancy and evict Jasmin Brown (the 'Tenant') because the Landlords requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on July 22, 2021.

The Landlords and the Tenant attended the hearing.

Determinations:

1. For the reasons that follow, I find that the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for themselves. The tenancy between the Landlords and the Tenant will be terminated.

Facts

2. On February 19, 2021, the Landlord served an N12 Notice of Termination ('N12 notice') on the Tenant. The N12 notice states that the Landlords intended to move into the rental unit and occupy it for at least one year. The N12 notice sought possession of the rental unit for April 30, 2021.
3. Section 48.1 of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act'), requires the Landlord to provide compensation to the Tenant in amount equal to one month's rent where an N12 notice is served. The Landlord testified that they provided compensation to the Tenant on March 16, 2021.
4. The Landlords testified that they require the rental unit to reside in.
5. The issue to be determined by the Board is whether the Landlords have satisfied the "good faith" requirement set out in subsection 48(1) of the Act which provides: a landlord

may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by:

- (a) the landlord

The Landlords' good faith intention

6. The onus is on the Landlords to establish that the Landlords in good faith require the rental unit for the purpose of residential occupation.
7. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...

8. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also found in *Salter* that the Landlords' motives are "largely irrelevant".

The Landlords' Evidence

9. The Landlord Gayle Buck ('GB') testified that they currently own a home that and that they intend to downsize to the smaller rental unit. She testified that they came to this decision as they are seniors, the house is too big, and they cannot maintain the property due to health issues. She testified that the rental unit is closer to their son and they wish to live closer to him. She testified that it is their intention to live in the rental unit for the rest of their lives.
10. GB testified that there has been some work on the property that the rental unit is located on to clear trees and that they have stored some items in external buildings on the property that are not a part of the lease agreement. GB testified that work has also been done to improve the laneway for safety.

The Tenant's Evidence

11. The Tenant testified that she has been out of work and on CERB due to the Covid-19 pandemic. She testified that she is now back at work but has "medical struggles" and "important issues are at play"; she did not provide any further information on what medical issues were at play and what if any accommodations were required to address them.
12. She testified that she had believed the Landlords would allow her to stay in the unit for 1 to 2 years, but six months later they asked her to move out. She testified that they have been doing work on the property removing trees and boulders. She testified that she believes that they are intending to build on the property.
13. The Tenant sought 6 months to move out of the rental unit.

Analysis

14. I found GB's evidence to be credible and her testimony to be believable and consistent. The Tenant's submissions did not provide any evidence to the contrary or contradict the Landlord's evidence.
15. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlords' testimony or their good faith intentions. I am therefore satisfied on the balance of probabilities, that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation and that they genuinely intend to reside in the unit for at least one year.

Section 83 considerations

16. Pursuant to section 83 of the Act, I am required to consider all of the circumstances in the case including both parties' situations to determine if it would be appropriate to grant relief.
17. The Landlords requested that the tenancy between the Landlords and the Tenant be terminated by standard order. The Tenant requested six months to vacate the unit.
18. I turned my mind to the circumstances of both the Landlords and the Tenant to determine an appropriate termination date for the tenancy. The Landlords testified that due to their health and age, it is difficult to stay in their current location and their desire is to move into the rental unit as soon as possible, taking into consideration that the Tenant received the Notice of Termination February 2021. The Tenant stated that she required six months to move but declined to provide evidence as to why that amount of would be necessary.
19. Having considered the circumstances of the parties, I find that there was insufficient evidence to substantiate a significant delay in termination of the tenancy. The Tenant declined to provide evidence of her circumstances and has had since February 2021 to seek alternative housing; I find that this is a significant amount of time to find housing. However, as the Tenant had disclosed that there are some medical issues that may affect her ability to find housing, the Tenant will be given 30 day to find housing. I do not find this to be overly prejudicial to the Landlords as they currently have a residence to live in and there is no urgency in their move.
20. 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 September 30, 2021 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of September 30, 2021. The Tenant must move out of the rental unit on or before September 30, 2021.

2. If the unit is not vacated on or before September 30, 2021, then starting October 1, 2021, 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 October 1, 2021.



Nicola Mulima
Member, Landlord and Tenant Board

August 30, 2021
Date Issued

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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 March 31, 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.