



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

Citation: Bilski v Stange, 2024 ONLTB 12844

Date: 2024-02-22

File Number: LTB-L-039257-23

In the matter of: UPPER FRONT UNIT, 24 RALEIGH ST CHATHAM
ON N7M2M7

Between: Krystof (aka chris) Bilski Landlords
Iwona Bilski

And

Rob Stange Tenant

Krystof (aka chris) Bilski and Iwona Bilski (the 'Landlord') applied for an order to terminate the tenancy and evict Rob Stange (the 'Tenant') 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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 5, 2024.

The Landlord's Legal Representative, Brennel Dean, the Landlord Krystof Bilski, on behalf of both Landlords and the Tenant 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/or the claim for compensation in the application. Therefore, the tenancy is terminated effective April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

Landlord's Own Use

3. On May 10, 2023, the Landlord gave the Tenant an N12 notice of termination deemed served on May 11, 2023, with the termination date of July 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord himself for a period of at least one year.
4. The Landlord compensated the Tenant an amount equal to one month's rent on July 14, 2023 as shown in Exhibit #1, which was not disputed.
5. The residential complex consists of a lower unit, an upper rear unit which is a one-bedroom apartment; and a two-bedroom apartment in the upper front unit, currently occupied by the Tenant.

Landlord's Evidence

6. The Landlord testified that the residential complex is owned by him and his wife, who are currently separated.
7. The Landlord testified that he has resided in a small two-bedroom unit, two doors down from the residential complex since approximately February 2022.
8. The Landlord stated that both residential units are side by side and he intends to combine both the upper front and upper rear unit into one residential unit, to have room for himself and his three children when they visit as he shares custody. Combining both residential units and converting the upper front unit, by adding an additional wall would result in a four-bedroom unit to accommodate him and his children, as they require separate rooms.
9. The Landlord testified that the upper rear unit is currently vacant as an N12 notice was served on the tenant who resided in that unit, and they have vacated. He has not moved into that unit as it is only a one-bedroom and does not accommodate his children.
10. He also testified that he has two daughters, ages 11 and 27, and a son age 20, who currently reside with his ex-wife in Leamington, approximately 67 kilometers from him. He indicated that they have a close bond and visit him altogether.
11. The Landlord stated that although his children visit him it is not often as he does not currently have the appropriate accommodations so that they can stay overnight.
12. The Landlord also stated he intends to occupy in the upper rear and upper front units as soon as possible. He will be able to occupy the units during the renovations, as his children were not always with him.
13. The Landlord testified that aside from the wall to the upper front, he is unsure of anything else he will be doing within the unit as he has not been in the front unit for approximately 2

years, and stated he hasn't been on good terms with the Tenant and had no reason to go there.

14. He also stated that the Tenant has refused entry to several contractors that attempted to enter the residential unit.
15. The Landlord indicated that if the tenancy was not terminated it would affect his quality of life, as he would not be able to see his children on a regular basis, due to the lack of accommodations in his current unit. He stated he wants to spend more time with them as he only sees them for a couple hours at a time and is only able to do things such as going to the mall. He claims that he doesn't have the room for them to have a dinner at his current house or to watch tv together, or to stay overnight.

Tenants Evidence

16. The Tenant stated that the Landlords have been separated for approximately 4 years and that Krystof Bilski lived in the unit below him, while it was being renovated, and moved out one week before the new tenants moved in.
17. The Tenant claims that the Landlord moved into his current unit, which is a two-bedroom apartment, approximately 7 months ago.
18. The affidavit of Krystof Bilski states that he currently resides in a 1 bedroom apartment. The Tenant stated that the Landlord lied on his affidavit because he actually lives in a twobedroom unit. The Landlord responded by explaining that he meant he only has 1 additional bedroom for his 3 children.
19. The Tenant also claims that the Landlord is doing reno-victions and has been getting away with it. The Landlord responded that the only N12's that have been served regarding his properties are for the upper front and rear units of the residential complex.
20. The Tenant also stated that he contacted a building inspector as the Landlord has not obtained building permits to complete the work. The Landlord submitted that he does not require building permits to do the work he is currently doing on the property.

Analysis

21. The N12 Notice was served under subsection 48(1) of the *Residential Tenancies Act, 2006* ("Act") which states, in part:

48 (1) 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 for a period of at least one year by,

- (a) the landlord;

22. The Landlords have the onus to prove that they require the rental unit in good faith unit for the purpose of residential occupation for a period of at least one year.
23. The caselaw establishes that to be successful, the Landlord must establish a genuine intends to move into the rental unit after the Tenant vacates and live there for at least one year.
24. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated that “the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal...”.
25. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the rental unit are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, the Court also found that the Board can 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.
26. I find that the Landlord has established a genuine intention to occupy the rental unit. I find it reasonable that the Landlord wants to have appropriate accommodations for his children so that he can have overnight visits. Although two of his children are adults, they do live with their mother and it seems appropriate that they would require separate rooms if staying overnight with their father, particularly because of their age.
27. Also, I accept the Landlords testimony that his current unit is not suitable because it is too small to even cook a dinner or to watch tv together with his children.
28. For the reasons given, I find the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.

Daily compensation, rent deposit

29. The Tenant was required to pay the Landlord \$3,504.53 in daily compensation for use and occupation of the rental unit for the period from August 1, 2023 to February 5, 2024, minus any rent or compensation payments made by the Tenant since August 1, 2023.
30. Based on the Monthly rent, the daily compensation is \$18.54. This amount is calculated as follows: \$564.00 x 12, divided by 365 days.
31. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
32. There is no last month's rent deposit.

Relief from eviction

33. 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 April 30, 2024, pursuant to subsection 83(1)(b) of the Act,

34. The Tenant has two children aged 9 and 10 and stated that he would need 60-90 days to find alternate accommodations as he has 9 years of stuff, including some of his ex-wife's belongings.
35. I find that a brief delay would be reasonable to provide the Tenant with additional time to find alternate accommodations. I have also considered that he has two school aged children and may also have to relocate to a new school.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated effective April 30, 2024.
2. The Tenant shall pay to the Landlord \$3,504.53, which represents compensation for the use of the unit from August 1, 2023, to February 5, 2024, minus any rent or compensation payments made by the Tenant since August 1, 2023.
3. The Tenant shall also pay the Landlord compensation of \$18.54 per day for the use of the unit starting February 6, 2024, until the date the Tenant moves out of the unit.
4. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 4, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 5, 2024 at 7.00% annually on the balance outstanding.

February 22, 2024

Date Issued

Christina Philp

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 October 30, 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.