



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

Citation: Subhan v Raizada, 2024 ONLTB 22113

Date: 2024-03-25

File Number: LTB-L-056861-23

In the matter of: MAIN LEVEL & UPPER LEVEL, 1465 BALLANTRAE DR MISSISSAUGA
ON L5M3N6

Between: Mustafa Subhan
Maysa Hafez Landlord

And

Devashish Raizada
Kamini Raizada Tenant

Mustafa Subhan and Maysa Hafez (the 'Landlord') applied for an order to terminate the tenancy and evict Devashish Raizada and Kamini Raizada (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 13, 2024.

The Landlord, Mustafa Subhan and Maysa Hafez, the Landlord's Legal Representative, Judith Callender, and the Tenant, Devashish Raizada ("DR"), attended the hearing. Ibrahim Subhan ("IS") appeared as a witness for the Landlord.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

Determinations:

Preliminary Issues

1. At the onset of the hearing, DR challenged the validity of the N12 Notice of Termination ("N12 Notice) as the postal code was incorrect and his name was spelled incorrectly on the N12 Notice.
2. Subsection 43(1) of the *Residential Tenancies Act, 2006* (the 'Act') states: where this Act permits a landlord or tenant to give a notice of termination, the notice shall be in a form approved by the Board and shall,
 - (a) identify the rental unit for which the notice is given;
 - (b) state the date on which the tenancy is to terminate; and
 - (c) be signed by the person giving the notice, or the person's agent
3. Pursuant to the Act, the rental unit has to be identified on a notice of termination but there is no specific requirement that the municipality or postal code be included. Similarly, the correct spelling of the Tenant's name is not a requirement pursuant to the Act. The Landlord served the Tenant the N12 Notice by handing the document to the Tenant. DR acknowledged receiving the N12 Notice and all the other documents pertaining to the matter. As such, I find that the Tenant has been properly served with a valid N12 Notice. This Order reflects the correct spelling of DR's name.
4. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of June 30, 2024 if the Landlord pays the Tenant \$2,000.00 by April 5, 2024.
5. The Tenant was in possession of the rental unit on the date the application was filed.
6. On May 1, 2023, the Landlord gave the Tenant an N12 Notice with the termination date of June 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
7. Pursuant to section 72(1) of the Act, the Landlord filed a declaration declared by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a period of at least one year.

Compensation

8. It was undisputed that the Landlord gave the Tenant a cheque on May 1, 2023 in the amount of \$2,000.00. This amount is equal to one month's rent and the termination date on the N12 Notice was June 30, 2023. DR testified he received the cheque but chose not to cash it. As such, I find that the Landlord complied with the requirements of subsection 55.1 of Act, which states:

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

9. Given the legislative intent of the Act to compensate tenants for notices served under section 48(1) and the Landlord's willingness at the hearing to pay the Tenant compensation within 48 hours of receiving this Order, I find that it would be fair to order the Landlord to pay the Tenant compensation if this application is granted.
10. The N12 Notice was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 Notice, the Landlord's child, in good faith, requires the unit for residential use.
11. 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."
12. In the case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional 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."
13. IS attended the hearing as a witness for the Landlord. IS is the son of the Landlord and is the intended occupant of the rental unit.
14. IS testified that he currently lives with his parents and intends to move into the rental unit with plans to start his own family. IS testified that his parents promised him the rental unit since he was young and that his parents purchased the rental property with the intention of their children occupying the property in the future.
15. IS testified that he owns a property in Etobicoke that he currently rents out for short term rentals. IS testified that he moved into the property for a short period but had to move back in with his parents as there was a past murder in the property and he was uncomfortable living there.
16. DR testified that he does not believe IS is going to move into the rental unit. DR testified that he informed the Landlord of a leak in the master bathroom shower 6-7 years ago and about leaks resulting from rain 3 years ago. IS testified that the Landlord spoke to a neighbour about the leaks and a few weeks later, the Landlord gave the Tenant the N12 Notice. DR testified that he believes the Landlord wants to evict him to avoid having to fix the leaks. DR testified the Landlord has multiple properties on Airbnb and believes that the Landlord will put the rental unit on Airbnb if he vacates.
17. Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of their child's residential occupation for a period of at least one year. I do not find that the alleged leaks reported to the Landlord years ago or the Landlord having short term rentals persuaded me to question IS's good faith intention to occupy the unit. The Tenant produced nothing to substantiate their claims that IS doesn't intend to occupy the unit, and their assertion that

the Landlord will re-rent the rental unit is speculation only. While DR submitted that the Landlord is in violations of property standards and bylaws with regards to their operation of short-term rentals, DR provided no documentary evidence to substantiate his claim.

Section 83 Considerations

18. 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, 2024 pursuant to subsection 83(1)(b) of the Act.
19. This is a long tenancy. The tenancy commenced on July 1, 2012.
20. DR testified that his 84 years old mother resides in the rental unit. While the Tenant has not been actively searching for alternative accommodations, DR testified that he is aware that rents have increased significantly. DR testified that due to health issues, he is unable to live in basement and apartments.
21. The Landlord requested a standard order.
22. Considering the length of the tenancy and the age and health of the occupants, I find it would be reasonable to allow the Tenant some additional time to find alternative housing. I am satisfied a brief delay until June 30, 2024, will not unduly prejudice the Landlord. While it may not be ideal for IS to remain in his parents' home for the time being, IS has somewhere to live and is not in any danger of becoming homeless. The evidence of IS does not establish that he has an urgent need to move into the rental unit.

Daily Compensation and Rent Deposit

23. The Tenant was required to pay the Landlord \$14,991.78 in daily compensation for use and occupation of the rental unit for the period from July 1, 2023 to February 13, 2024.
24. Based on the Monthly rent, the daily compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
25. Since the termination date in the notice of termination, the Tenant paid the Landlord \$16,000.00 in rent. The parties do not dispute that as of the hearing, the Tenant was up to date on the rent.
26. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$390.33 is owing to the Tenant for the period from June 23, 2012 to February 13, 2024.
27. 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. **It is ordered that:**
 1. On or before April 5, 2024, the Landlord shall pay the Tenant compensation equal to one month's rent (\$2,000.00).

2. If the Landlord complies with paragraph one, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2024.
3. If the unit is not vacated on or before June 30, 2024, then starting July 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. If the Landlord does not make the payment required in paragraph one above, the tenancy is not terminated and the Tenant does not have to vacate the rental unit.
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 July 1, 2024.
6. The Landlord owes \$2,390.33 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
7. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$2,390.33.
8. However, the Landlord is authorized to deduct from amount owing to the Tenant \$65.75 per day for compensation for the use of the unit starting February 14, 2024 to the date the Tenant moves out of the unit.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

March 25, 2024

Date Issued

Vicky Liu

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, 2025 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.

