



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

Citation: Ebrahimi v Heath, 2024 ONLTB 20008

Date: 2024-03-20

File Number: LTB-L-061536-23

In the matter of: 85 DERBY CRT
NEWMARKET ON L3Y5Z8

Between: Sohila Ebrahimi Landlord

And

Megan Heath Tenant

Sohila Ebrahimi (the 'Landlord') applied for an order to terminate the tenancy and evict Megan Heath (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.

This application was heard by videoconference on February 14, 2024 at 3:33 p.m.

The Landlord Sohila Ebrahimi, the Landlord's representative Preston Haynes, licensed paralegal and the Tenant Megan Heath attended the hearing. Nastaran Shirazi also attended the hearing as a witness for the Landlord.

Preliminary Issue:

1. As a preliminary matter, the Tenant requested an adjournment of the proceedings to have LTB-T-017651-23 (T2 Application) heard together with LTB-L-061536-23 (L2 Application). For the following reasons, this request is denied.
2. The Tenant testified that the evidence that will be brought forward as part of this L2 application is similar to the evidence to be brought forward in the yet to be scheduled T2 application. The Tenant submitted due to this alleged overlap there could be potentially contradictory findings and therefore it is expeditious for the Board to hear the matters together.

3. The Landlord's representative objected to the adjournment and submitted that the matters in the application were not related.
4. If find the Tenant led insufficient evidence to prove the matters were related. From a review of the Tenant's evidence brief, the issues that will be raised as part of the T2 Application are almost entirely about the Landlord's actions or inactions with respect to repairing the furnace. Based on the evidence before me and after hearing submissions from both parties, I find that the Tenant's T2 application is seeking a rent abatement based on alleged harassment related to these repairs and that this will not have an impact on the L2 application.
5. Section 183 of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. I find that the Tenant received adequate notice of the hearing, both sides were present at the hearing and the Tenant had received the Landlords' evidence at least 7 days before the hearing in accordance with LTB Rule of Procedure 19. I am therefore satisfied that the Tenant had an adequate opportunity to know the issues and be heard on the matter respecting the L2 application. Therefore, the adjournment request is denied.

Determinations:

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On July 12, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child Nastaran Shirazi.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (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 by,
 - (c) a child or parent of the landlord or the landlord's spouse
 - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

5. In this case, the N12 notice gives the Tenant over 60 days' notice and the termination date is the day a period of the tenancy ends.

Good Faith

6. I find that the Landlord in good faith requires possession of the rental unit for the purpose of the Landlord's mother's residential occupation for a period of at least one year.
7. In *Salter v. Beljinac, 2001*, 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 Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are “largely irrelevant’.
9. The Landlord testified the residential complex is a single-family home with four bedrooms and two bathrooms and that the home was originally purchased in 2014 with the intention of her daughter to move in.
10. The Landlord's witness, Ms. Shirazi, testified that she intends to live in the unit for a period of at least one year with her fiancé. Currently living in a small 700 square foot apartment Ms. Shirazi further testified that the primary reason she requires the unit is for the additional space that will be needed to start a family and that the location is also close to her place of employment as a teacher in York Region. The declaration signed July 12, 2023 by Nastaran Shirazi was entered into evidence and states her intention to occupy the unit for at least one year.
11. The Tenant alleged the Landlord was issuing the N12 notice of termination in bad faith. The Tenant specifically alleged the Landlord actually intends to sell or demolish the home, not to use it for her daughter's own use, as the home had been previously listed for sale in 2019. The Tenant submitted into evidence a copy of a past real estate listing dated September 17, 2019. The Tenant further testified that she had conversations with the Landlord's late husband, Mr. Shirazi, about the Landlord's intention of renovate, demolish and sell the home.
12. The Landlord denied the allegations from the Tenant that she intends to sell the home and testified that her circumstances had changed since her husband passed away in June 2023. Once the Landlord's daughter is able to occupy the unit, she would live closer to the Landlord which is more convenient for the family.
13. I have considered all the evidence and I find that the Landlord proved that it is more likely than not that they in good faith require the rental unit for the purposes of residential occupation of her child for a period of at least one year. The Tenant led insufficient evidence to prove bad faith; just because the home was previously listed for sale does not mean that the home will be listed for sale in the future. I am persuaded by the testimony of Ms. Shirazi she genuinely intends to occupy the unit for a period of at least one year.

Compensation

14. 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”.
15. 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. In the present case, the termination date in the N12 Notice of Termination is September 30, 2023.
16. It is undisputed the Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023. On September 5, 2023, \$2,000.00 was e-transferred to the Tenant, and on September 7, 2023 \$900.00 was e-transferred to the Tenant for a total of \$2,900.00, equal to the lawful monthly rent. The Landlord testified the staggered payments were as a result of technical limitations with the online banking app.
17. I have considered all the evidence and I find it is more likely than not the Landlord provided compensation to the Tenant an amount equal to one month's rent. The compensation was provided before September 30, 2023.
18. The Landlord collected a rent deposit of \$2,900.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$108.75 is owing to the Tenant for the period from June 2023 to present.
19. 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

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

Serious Breach of Landlord’s Responsibilities

21. The Tenant alleged that there have been ongoing maintenance problems with the furnace in the unit and submitted that these circumstances result in mandatory refusal of eviction under subsection 83(3)(a) of the Act. That section states that the Board must deny eviction when “the landlord is in serious breach of the landlord’s responsibilities under this Act or of any material covenant in the tenancy agreement.”
22. The Tenant testified the furnace required repair during the winter of 2023 resulting in a lack of heat in the unit. The issue was remedied by the Landlord on or about the end of February 2023.
23. With respect to the heating issues from the furnace, subsection 83(3)(a) of *the Act* speaks in the present tense, thus I cannot consider past breaches that have been remedied.

Since it is undisputed the Landlord remedied the furnace issues in February 2023, I cannot find there is a breach.

Other Circumstances

24. The Tenant testified she has a family of six with four young children aged 14, 10, 9 and 2 years old and one these children has special needs. The Tenant further testified she is the sole income earner with a current household income of \$90,000.00 per year and is currently spending 65% of household income on rent and utilities. With no savings and a low credit score, the Tenant submitted that finding a new unit that is both affordable and suitable for her family in the community nearby her children's school and therapist would be challenging given the current rental market conditions. The Tenant further testified she has looked at over 100 units to date and has not been successful in finding a suitable unit. For these reasons, the Tenant requested the Board delay the eviction for several months.
25. The Landlord testified they required the unit as soon as possible for Ms. Shirazi. The Landlord did not lead sufficient evidence to demonstrate why the Landlord would experience any significant prejudice as a result of delaying the eviction.
26. After considering all the circumstances, I find that it would not be unfair to postpone the eviction until June 30, 2024. This will provide the Tenant with additional time to complete a housing search for an affordable and suitable unit in the area for her and her young family without significantly prejudicing the Landlord.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of June 30, 2024. The Tenant must move out of the rental unit on or before June 30, 2024.
2. 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.
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, 2024.
4. The Landlord shall apply the rent deposit of \$2,900.00 to the lawful monthly rent due June 1, 2024 which is for the last month of the tenancy. The Landlord shall return the balance of \$108.75 equal to the interest owing, to the Tenant by June 30, 2024.
5. The Landlord, in lieu of returning the balance to the Tenant as specified in paragraph 4, is authorized to deduct the balance owing to the Tenant of \$95.34 per day for compensation for the use of the unit starting March 21, 2024, to the date the Tenant moves out of the unit, until the balance owing is zero.
6. If the unit is not vacated on or before June 30, 2024, the Tenant shall also pay to the Landlords \$95.34 per day for compensation for the use of the unit from July 1, 2024 to the date the Tenant moves out of the unit.

March 20, 2024

Date Issued

Greg Witt

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 December 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.