



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

**Citation:** Wojcicki v Carrier, 2024 ONLTB 9532

**Date:** 2024-02-20

**File Number:** LTB-L-034264-23

**In the matter of:** Lower Unit, 414 DAVENPORT RD  
TORONTO ON M4V1B5

**Between:** Dagmar Wojcicki Landlord

**And**

Anthony Carrier Tenant

Dagmar Wojcicki (the 'Landlord') applied for an order to terminate the tenancy and evict Anthony Carrier (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 January 17, 2024.

The Landlord represented by Joshua Azan, the Landlord's property manager Shuen Chow and the Tenant attended the hearing.

**Preliminary Issues:**

1. The Tenant questioned the validity of the Landlord's signatures on the N12 notice and the L2 application because they do not match completely and the fact the Landlord lives in the Cayman Island she couldn't have signed the documents.
2. The Landlord testified that those were in fact her signatures and sometimes her signature isn't always exactly the same.
3. I do not find any reasons to believe the signatures on both documents were not the Landlords.
4. The Tenant the Landlord not inserting her own mailing address on the application is a cause for concern.

5. The Landlord testified that she uses her legal representative's mailing address. The Landlord testified that she has agreed to have her legal representative's mailing address as her address for service.
6. The Tenant also alleges the Landlord's Declaration is vague in manner. I explained to the Tenant that this not prejudicial to the matter at hand as the Landlord is present and the Tenant will have an opportunity through cross examination to question the Landlord.

**Determinations:**

7. 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 tenancy is terminated.
8. On March 7, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by herself.
9. It was uncontested the Landlord paid the one-month compensation as required under the Act.
10. The issue to be determined is whether 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", as per subsection 48(1) of the *Residential Tenancies Act, 2006* (the 'Act')

Landlord's evidence

11. The Landlord submitted along with the application a Declaration dated May 1, 2023 stating she is the property owner of the rental unit, and in good faith requires the rental unit for her own use for a period of at least one year. The Declaration does not detail the reasons for occupancy. D.W. provided viva voce evidence of the reasons for her occupying the rental unit.
12. It was the evidence of D.W. that the rental property consists of a single detached home with a 3-bedroom unit on the main floor with a studio apartment in the basement. The basement connects by a staircase to the upstairs unit.
13. D.W. testified that she intends to relocate her elderly parents from St. Thomas where they are currently living independently in an apartment. She intends to move the parents and caregivers into the upper unit. Moving the parents to Toronto will allow them to have access to world class healthcare which isn't available in St. Thomas. The Landlord and her husband would move into the basement unit.
14. D.W. testified that she currently lives in the Cayman Islands with her family. D.W. operates a business as a pharmacist there and set up to work remotely as she has been doing the past year while taking care of her parents.

15. D.W. testified that she would renovate the rental units to be combined as one. The parents would reside upstairs with the caregivers, and she would stay in the basement when she comes back to care for the parents.
16. D.W. testified that she had contractors on site and does not have a timeline of how long the renovations would take place. D.W. acknowledges the place is old.
17. D.W. testified that she is able to work remotely and would come to Toronto for a couple weeks or months at a time. If she was required to go back to the Cayman Islands, she is able to as her husband can stay at the rental unit.

#### Tenant's evidence

18. It is the Tenant's evidence that he believes the Landlord does not intend to move in to the rental unit because she currently lives in the Cayman Islands and it is just a story she is telling. The Tenant believes the Landlord is trying to evict him because of issues in the past and issues the Tenant has with the property manager' trying to evict him.
19. The Tenant argued there was not in interior staircase connecting the two units and that his unit is a bachelor unit with open space and does not have a separate bedroom. It would not make sense that the Landlord would occupy the basement unit.
20. The Tenant testified that there is a large flight of stairs entering the main unit. The upstairs unit has been vacant for some time and the home is not in good shape for the elderly parents to live in.

#### Analysis

21. The Tenant did not present any real compelling evidence to challenge the Landlord's intentions other than to say that the Landlord and the property manager are trying to evict him because there is conflict between the Tenant and the property manager and that it is unlikely the Landlord will be moving in because she is living in the Cayman Island.
22. There was no dispute that the Landlord has several applications filed against the Tenant so it would be a reasonable deduction that there are issues between the Tenant and the Landlord.
23. However, the relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"), this legal test remains unchanged under the successor legislation (see *Salter*, para. 25 and 26).
24. The subsequent case law also confirms that while the good faith of the Landlords remain the test to be applied in this application, I may also draw inferences about the Landlords' good faith from the Landlords' conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC) ("Fava").

25. The onus is on the Landlord to establish that the Landlord in good faith requires the rental unit for the purpose of the residential occupancy by herself.
26. The Tenant gave some interesting arguments and brought to light some questionable reasons why the Landlord is not likely going to be occupying the rental unit. More specifically the Landlord currently lives in the Cayman Islands, and it would not make sense that she would move back from there when her family is there and runs a pharmacy business there.
27. Unfortunately, the reasonableness of the Landlord's intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), [1992 CanLII 7625 \(ON SC\)](#), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A landlord need not establish that his requirement is reasonable, only that he *bona fide* wanted and genuinely had the immediate intention to occupy.

28. I find therefore that the reasonableness of the Landlord's intention to move into this rental unit, to care for her parents, is not relevant to the issues of intention or good faith. Although it may seem unlikely and unreasonable it is not for the Board to determine what unit would be "most reasonable"; the Board's determination is whether there is good faith and genuine intention to reside in the unit.
29. I have no reason to doubt the truthfulness of the Landlord's testimony or her good faith intentions. I am therefore satisfied on the balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of the residential occupation by herself for at least one year.

Daily compensation, NSF charges, rent deposit.

30. The Tenant was required to pay the Landlord \$8,421.94 in daily compensation for use and occupation of the rental unit for the period from June 1, 2023 to January 17, 2024. (less any amount the Tenant has already paid to the Landlord)
31. Based on the Monthly rent, the daily compensation is \$36.46. This amount is calculated as follows: \$1,108.95 x 12, divided by 365 days.
32. There is no last month's rent deposit.

Relief from eviction

33. The Landlord requested the tenancy between the Landlord and Tenant but did not provide a specific timeline as to when she would require occupancy. The Landlord stated they intend to renovate prior to moving in and did not press that there was urgency to move in.
34. The Tenant testified that he fears he will be homeless and does not think he will be able to afford market rent if he has to move out. There is nothing much available to him.
35. The Tenant is looking at a year to find suitable accommodations.

36. 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. This will allow the Tenant sufficient time to organize his affairs and find suitable accommodations.
37. As explained to the Tenant at the hearing, if the Tenant discovers that the Landlord served on to him an N12 in bad faith the Tenant can file a T5 application up to a year after the Tenant moves out.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated effective June 30, 2024. The Tenant must move out of the rental unit on or before June 30, 2024.
2. The Tenant shall pay to the Landlord \$8,421.94, which represents compensation for the use of the unit from June 1, 2023 to January 17, 2024. (less any amounts already paid to the Landlord)
3. If the unit is not vacated by June 30, 2024, then starting July 1, 2024 the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction can be enforced.
4. 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.

**February 20, 2024**

**Date Issued**

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Nicole Huneault

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 August 18, 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.