



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

Citation: Jaikarran v Eddin, 2024 ONLTB 12911

Date: 2024-03-19

File Number: LTB-L-053863-23

2024 ONLTB 12911 (CanLII)

In the matter of: Main, 48 VIEWCREST CIR
ETOBICOKE ON M9W7G6

Between: Harrinauth Jaikarran Landlord

And

Rami Khair Eddin Tenant

Harrinauth Jaikarran (the 'Landlord') applied for an order to terminate the tenancy and evict Rami Khair Eddin (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 7, 2024.

The Landlord represented by Joseph Behar and the Tenant represented by Maria Sturino attended the hearing.

The Landlord's daughters, Tashena Jaikarran and Anjali Jaikarran attended the hearing and administered affirmations at the beginning of their testimony.

Preliminary Issue:

The Tenant's legal representative Maria Sturino believes the Landlord's application should be dismissed because the two Declarations made by Tashena Jaikarran and Anjali Jaikarran were not signed and do not state that "intends to occupy for at least one year".

The Landlord's representative advised the parties and the Board that a newer signed version was uploaded, and these were sent to the Tenant's representative.

I denied the request to dismiss because here is no prejudice to the Tenants with respect to the Declarations not signed and lacking statements because the named Declarants were present for the hearing to give viva voce evidence about their intentions to occupy the rental unit.

Determinations:

1. 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 effective July 31, 2024.
2. The issue to be determined is whether the Landlord's parent "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').
3. The Tenant was in possession of the rental unit on the date the application was filed.

Landlord's Own Use

4. On July 6, 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 his two daughters Tashena Jaikarran and Anjali Jaikarran.
5. The Landlord testified he wants his two daughters to move into the rental unit so they can have their own space and privacy. The two daughters are both studying at university and currently live with their parents in Etobicoke.
6. The Landlord testified that in 2021 served a N13 because he wanted to do repairs to the rental unit and retracted it because at the time, the Tenant had personal issues and was sick. The Landlord never filed the L2.
7. The Landlord testified that the rental unit is a two-unit complex with a basement unit and an upper unit, where the two daughters intend to move in.
8. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023

Witnesses Tashena Jaikarran and Anjali Jaikarran

9. Each witness provided separate testimony that they intend to occupy the rental unit for a period no less than one year. Tashena Jaikarran and Anjali Jaikarran both attend Toronto Metropolitan University. They currently live at home with their parents, have jobs and intend to pay rent to their father when they occupy the rental unit.

Tenant's evidence

10. The Tenant argues that the Landlord is acting in bad faith because prior to being served the N12 he first told the Tenant he was moving in then was asked to pay \$2,800.00 in rent. The Landlord also gave the Tenant a N13 because he wanted to renovate the rental unit.

Analysis

11. 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).
12. 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”).
13. The Landlord provided the Board with Declarations from Tashena Jaikarran and Anjali Jaikarran and testified that his daughters who are adult children wish to live on their own and have their own private living accommodations while they attend university.
14. The Landlord testimony were consistent with the direct evidence provided by Tashena Jaikarran and Anjali Jaikarran.
15. Tashena Jaikarran and Anjali Jaikarran provided sworn testimony as to their intentions of moving into the rental unit. They are now living at home and are ready to move out and live on their own and have their own space and privacy. They attend university and have jobs and intend to pay rent to their father.
16. I found that Tashena Jaikarran and Anjali Jaikarran to be credible witnesses. Their individual testimony remained consistent and help up under cross examination. No evidence was presented to sufficiently challenge Tashena Jaikarran’s and Anjali Jaikarran’s intentions to move into the rental unit.
17. I find that the Landlord has proven that they in good faith require possession of the rental unit for the purpose of Anjali Jaikarran and Tashena Jaikarran’s residential occupancy for a period of at least one year.

Relief from eviction

18. The Tenant submitted that his health is bad and suffered a brain stroke. This affects his work and winter is very bad time to move. The Tenant only works part-time so finding suitable accommodations in his budget is difficult. He did start look at similar rental unit and the market rent is \$3000.00. The Tenant’s mother will be coming in the summer.

19. The Landlord's representative submitted that times are difficult for everyone and that the Landlord would be agreeable to delay the tenancy to March 31, 2024. The Landlord and the Landlord's daughter did not say how soon they require the rental unit.
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 July 31, 2024 pursuant to subsection 83(1)(b) of the Act. This will give the Tenant sufficient time to get his affairs in order and find accommodation suitable to him.
21. The Tenant is reminded that if finds the Landlord did not give the N12 in good faith, he may file for a T5 up to one year after vacating the rental unit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of July 31, 2024.
2. The Tenant must move out of the rental unit on or before July 31, 2024.
3. If the unit is not vacated by July 31, 2024, then starting August 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 August 1, 2024.

March 19, 2024

Date Issued

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 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.

