



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

Citation: Ganatra v Zammitt, 2024 ONLTB 2841

Date: 2024-01-10

File Number: LTB-L-026526-23

In the matter of: APT C, 3346 DUNDAS ST W TORONTO
ON M6P2A4

Between: Dipika Ganatra Landlord

And

Joseph Zammitt Tenant

Dipika Ganatra (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Zammitt (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 December 13, 2023.

The Landlord and Landlord's legal representative A. Choudhry and Landlord's witness Rohan Ganatra 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.
2. The application is based on an N12 Notice of Termination served on the Tenant on March 26, 2023, with a termination date of May 31, 2023. The N12 indicates that the Landlord's son requires the rental unit.
3. The Landlord has filed an affidavit sworn 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 minimum of 1 year.

4. The Landlord has paid to the Tenant compensation equal to one month's rent.
5. The Tenant testified, and the Landlord did not dispute, that the Tenant is up to date on their rent. Therefore, I find that the Tenant does not owe any rent or daily compensation up to December 31, 2023.
6. Based on the Monthly rent, the daily compensation is \$33.27. This amount is calculated as follows: \$1,012.00 x 12, divided by 365 days. The order will require the Tenant to pay this per diem amount beginning January 1, 2024 until the day they move out of the rental unit
7. There is no last month's rent deposit.

Good faith:

8. The N12 was served pursuant to Section 48(1) of the Residential Tenancies Act, 2006, (the '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,
 - (c) a child or parent of the Landlord or the Landlord's spouse
9. 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.
10. In the more recent case of *Fava v. Harrison, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.)* the 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.

Landlord's evidence:

11. The Landlord's son Rohan Ganatra ('R.G') provided oral testimony at the hearing. R.G testified that he is currently residing with his parents in the City of Vaughan and requires the rental unit for his own use. R.G was accepted to a four-year full-time program at the Toronto Metropolitan University ('TMU') beginning in March 2023 and intends to reside in the rental unit during his university program. R.G testified that he spends two hours every day commuting from his parents' house to the university. This commute poses difficulties particularly when classes are scheduled in the morning or late evening. He testified that he needs extra study hours after school and highlighted that the rental unit is conveniently just a 30-minute subway ride from the university. The Landlord's legal representative submitted the acceptance letter, offer of admission to university and R. G's student Card from TMU as evidence during the hearing.

12. At the hearing, the Landlord testified that her son's intention was to move into the rental unit in the summer of 2023, contingent upon receiving official confirmation from TMU. The Landlord testified that her 22-year-old son seeks independent living space for his own privacy at this stage. She also clarified that she does not intend to charge her son rent for the rental unit, expressing her desire for him to reside closer to the school and have increased study time.
13. During cross-examination, the Landlord affirmed the presence of two rental units within the residential complex. The specific rental unit sought is situated on the main floor, while other tenants occupy the upper portion of the property. The Landlord clarified that her son specifically requires this particular rental unit due to its one-bedroom configuration along with a kitchen and bathroom. She testified that the upper level is occupied by a family, and her son does not need that much space.

Tenant's evidence:

14. The Tenant disputed that the Landlord's son in good-faith intends to reside in the rental unit. The Tenant believes that the Landlord's true intention is to re-rent the unit for market rent. The Tenant is 66-year-old and has resided in the rental unit for approximately 15 years. He pays \$1,012.00 for renting the unit and a garage for his three vehicles.
15. The Tenant testified that in 2019, the Landlord requested a rent increase of \$200.00 per month, which the Tenant declined, because it exceeded the rent increase guideline. Since then, the relationship between the parties has broken down. The Tenant further testified that the Landlord refused to repair the exterior walls outside of the rental unit, leading the Tenant to believe that the Landlord aims to renovate the unit for re-rent it at a higher rent after he vacates. The Tenant described the rental unit as small and unsuitable for the Landlord's son or the son's friends, and submitted photos of the rental unit, exterior walls, and the garage as evidence during the hearing.
16. The Tenant testified that he has been living in the rental unit for 15 years and has strong community ties in the area. The rental unit is close to his pharmacy, doctor's offices, and church. He resides with his wife, who works part-time at a convenience store across the street. The Tenant testified that his household income is limited, and it is approximately \$3,800.00 per month, including his Canada Pension Plan and Old Age Security and his wife's part-job. The Tenant described the rental unit as his home, and he testified that if he and his wife were evicted, it would be difficult to find a new rental unit the area given the increase in market rent. Additionally, the Tenant testified that he has multiple health issues and needs to see his doctor on regular basis. The Tenant submitted letters from their doctor as evidence during the hearing.

Analysis:

17. Based on the evidence before the Board, I find that the Landlord has established on a balance of probabilities that the Landlord's son genuinely intends to move into the unit

and live there for at least one year. Therefore, the Landlord in good faith requires possession of the rental unit for a period of at least one year.

18. The Landlord and her son provided credible testimony at the hearing and the Tenant did not provide concrete, objective evidence to effectively challenge the Landlord's intentions and lead me to conclude that the notice was given in bad faith.
19. Although there is another rental unit in the residential complex, the Landlord provided a reasonable explanation as to why her son only needs the rental unit.

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 March 31, 2024 pursuant to subsection 83(1)(b) of the Act.
21. Although the Landlord's application is granted, I find that it would not be unfair to delay termination of tenancy to March 31, 2024 to allow the Tenant additional time to secure alternate housing.
22. The evidence before the Board is that the Landlord's son currently has adequate housing and that the Tenant has resided in the unit long-term. There was no evidence before the Board to support any prejudice against the Landlord or her son in granting the Tenant some additional time to vacate. In other words, the Landlord does not appear to require vacant possession of the rental unit on an urgent basis.
23. The Tenant testified that he is a person with multiple health issues. The Tenant requested relief from eviction, citing the hardship he will likely experience based on age, income and medical conditions, if he and his wife are required to vacate the rental unit.
24. The Tenant has resided in the rental unit for 15 years, he is a senior and the application to terminate the tenancy was filed on a no-fault basis. I am also mindful that there was no evidence that postponing the eviction will cause the Landlord imminent and irreparable financial, or any other, loss or harm. Therefore, postponing the enforcement of the eviction until March 31, 2024, does not result in disproportionate or otherwise undue loss or harm to the Landlord.

It is ordered that:

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

4. The Tenant shall pay to the Landlords \$33.27 day for compensation for the use of the unit starting January 1, 2024 until the date he moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2024, at 7.00% annually on the balance outstanding.

January 10, 2024

Date Issued

Joy Xiao
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 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.