



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

Citation: Suppa v Figliomeni, 2024 ONLTB 270

Date: 2024-01-08

File Number: LTB-L-047952-23

In the matter of: BASEMENT UNIT 1, 55 AGINCOURT RD
WOODBIDGE ON L4L2Z8

Between: Maria (Mary) Suppa Landlords
Giuseppe Suppa

And

Angie Figliomeni Tenants
Tony Figliomeni

Maria (Mary) Suppa and Giuseppe Suppa (the 'Landlords') applied for an order to terminate the tenancy and evict Angie Figliomeni and Tony Figliomeni (the 'Tenants') because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on December 6, 2023. The Landlords' representative, Rosalie Suppa, attended the hearing. Tenant Angie Figliomeni and the Tenants' representative, Vanessa Figliomeni, also attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated and the Tenants must move out of the rental unit on or before February 15, 2024.

N12 Notice of Termination

2. On June 6, 2023 the Landlords served the Tenants an N12 Notice of Termination with a termination date of October 31, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of their residential occupation for a period of at least one year. The Landlords applied to the Board to terminate this tenancy on June 16, 2023. I find that the Landlords' application complied with s. 69(1) of the *Residential Tenancies Act, 2006* (the "Act").
3. The Tenants were in possession of the rental unit on the date the application was filed, and they remain in possession of the rental unit as of the day of this hearing. The monthly rent is \$1,700.00 paid on the first day of each month.

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Compensation

4. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.

Landlords' Evidence

5. The Landlords' representative submitted that on August 9, 2023 the Landlords mailed a \$1,700.00 cheque to the Tenants to provide the Tenants with one month's rent compensation. The representative stated that the cheque was delivered to the rental unit on August 14, 2023 by Canada Post. The Landlords submitted a copy of the cheque as well as a confirmation from Canada Post of delivery to the unit on August 14, 2023.
6. The representative submitted further that the Landlords received a text from the Tenants on August 16, 2023 that the Tenants had received the compensation cheque; however, they planned to return the cheque to the Landlords. The representative noted that the cheque was returned to the Landlords on September 6, 2023, and no further attempts were made by the Landlords to provide the Tenants with one month's rent compensation.

Tenants' Evidence

7. The Tenants confirmed that they received the one month's rent compensation cheque from the Landlord on August 16, 2023, but they returned the cheque to the Landlords in the belief that retaining and cashing the cheque would jeopardize their entitlement to oppose the Landlords' N12 notice at a Board hearing.

Analysis

8. I accept that s. 55.1 of the Act requires that a landlord compensate a tenant no later than the termination date set out in the applicable N12. However, a tenant cannot frustrate the ability of a landlord to provide compensation by refusing to accept compensation offered by a landlord, for example, by failing to accept a cheque for the one month's rent compensation provided by the landlord.
9. On the basis of the evidence provided, I find that on August 14, 2023 the Landlords met their obligation to pay the Tenants compensation equal to one month's rent in accordance with s. 48.1 and s. 55.1 of the Act, by providing the Tenants with a cheque for \$1,700.00 before the termination date of October 31, 2023.
10. The Tenants' failure to accept the cheque delivered to the unit on August 14, 2023 does not invalidate the Landlords' service of the one month's rent compensation before the termination date. However, if the tenancy is terminated, the Tenants shall be compensated before the termination of the tenancy, pursuant to s. 83(4) of the Act.

11. Subsection 190(2) of the Act provides the Board with the jurisdiction to extend time requirements except for those identified in s. 56 of *Ontario Regulation 516/06* to the Act. Section 55.1 of the Act is not identified in s. 56 of the Regulation. Therefore, I am, to the extent necessary, exercising my discretion under s. 190(2) of the Act to extend the time for the Landlords to provide another one month's rent compensation cheque to the Tenants.
12. If the tenancy is terminated, the Landlords will provide another cheque in the amount of \$1,700.00 to the Tenants on or before January 31, 2024.

Good Faith

13. The N12 was served pursuant to s. 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlords must establish that they, in good faith, require the unit for their residential use.
14. 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.
15. 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.

Landlords' Evidence

16. The Landlords' representative submitted that the Landlords currently live in Wasaga Beach; however, Landlord Maria Suppa's father, who lives in the Greater Toronto Area (GTA), is terminally ill with a survival prognosis of a couple of years. The representative noted that the Landlords travel several times per week to assist with Maria Suppa's father's home care, and would like to avoid this long commute by living in the rental unit.
17. The representative submitted further that the Landlords also care for their daughter's young children three to four times per week, and noted that their daughter lives close to the rental unit. The representative stated that the Landlords seek to live closer to their daughter to assist with child-care for their grandchildren.
18. Pursuant to s. 72(1)(a) of the Act, each Landlord provided a signed declaration dated June 16, 2023 declaring their good faith intention to reside in the rental unit for their own personal use for a period of at least one year. Landlord Maria Suppa's declaration further explained the reasons the Landlords seek to reside in the rental unit – as submitted by the Landlords' representative – noting also that the Landlords prefer to reside in their own unit in Woodbridge, rather than regularly staying with family members during their frequent visits to the GTA.

19. The Landlords' representative confirmed, as noted in the L2 application pursuant to s. 71.1(3) of the Act, that the Landlords have not, within two years of filing their application, served any other notice under s. 48, 49, or 50 of the Act, for this unit or a different unit.
20. The Landlords' representative remarked that the Tenants have resided in the rental unit since November 1, 2022. The representative stated that the Landlords own two rental properties, a second property in Wasaga Beach and the rental unit in Woodbridge. The representative submitted, and Landlord Maria Suppa declared, that the basement rental unit is a walkout to the ground level, and therefore ideal for the aging Landlords.
21. The representative asserted that the Tenants' dog residing at the rental unit was not an issue for the Landlords.

Tenants' Evidence

22. The Tenant testified, and the Tenants' representative submitted, that they believe the Landlords' application to evict the Tenants was not being made in good faith because:
 - a) the Landlords were multi-property owners who could move into another one of their units;
 - b) the basement unit seems unreasonable for the Landlords for a primary residence;
 - c) the Landlords have a doctor in Wasaga Beach, and would be further from their doctor if they lived in the unit;
 - d) if the Landlords resided in the unit, and provided significant home care to Landlord Maria Suppa's father, they would not have any time to assist in caring for their grandchildren; and
 - e) the Landlords' rapport with them changed in November 2022 when the Landlords became aware the Tenants had a dog. The Tenant contended that the Landlords are seeking their eviction because they do not want a dog in the rental unit.

Analysis

23. On the basis of the evidence provided, I find that the Landlords genuinely intend to use the rental unit for her own personal residence for at least one year, and therefore require possession of the rental unit, pursuant to s. 48(1)(a) of the Act.
24. I am satisfied that the Landlords do not own another rental unit in the GTA that provides them with convenient access to their father and daughter. I am not satisfied that having a doctor in Wasaga Beach, and splitting time between caring for their father and their grandchildren, are such serious obstacles for a move to the GTA that it would preclude a reasonable person from embarking upon such a move, and is therefore an indication of bad faith in the Landlords serving an N12.
25. I am satisfied that the unit would be a reasonable primary residence for the Landlords given its proximity to family members who require support, as well as its ground-level access.

26. I accept that the Landlords may not have been pleased regarding the presence of a dog at the rental unit; however, I am not satisfied that this is the reason the Landlords seek a termination of the tenancy. The Tenants did not establish with sufficient evidence that the presence of their dog was the reason the Landlords served them with an N12.

Daily Compensation and Rent Deposit

27. The Landlords did not claim compensation in their L2 application for each day the Tenants remained in the unit after the termination date.

28. There is no rent deposit for this tenancy.

Relief from Eviction

29. The Tenant testified that she has moved many times, and that she wants to remain in the unit to avoid the stress of moving, as well as to take care of elderly family members. The Tenant asserted that she takes anti-anxiety medication to cope with the stress of possibly losing her home. The Tenant stated that she wanted to remain in the unit.

Analysis

30. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until February 15, 2024 pursuant to subsection 83(1)(b) of the Act.

31. I find that, although the Landlords in good faith require possession of the rental unit for their residential occupation, postponing the Tenants' eviction until February 15, 2024 will provide the Tenants with a bit more time to secure a new rental unit and transition to a new home with the least amount of stress. I find that providing the Tenants with complete eviction relief, or delaying the Tenants' eviction beyond February 15, 2024, would be unfair to the Landlords who seek to reside in their rental unit as soon as possible to support their terminally ill father, and to assist caring for their young grandchildren.

32. I accept that a postponement of the eviction beyond February 15, 2023, or complete eviction relief would be optimum for the Tenants to eliminate the stress of moving, and to provide them with more residence stability. However, in this matter I find that the prejudice to the Landlords in delaying the eviction beyond February 15, 2024 would be greater than the prejudice to the Tenants of a tenancy termination on February 15, 2024. The Landlords have established their good faith intention to move into the rental unit for the purpose of supporting family members.

33. The Tenants have not sufficiently established grounds for complete eviction relief or for a postponement of the eviction beyond February 15, 2023. I find that the Landlords' requirement for the unit supersedes the Tenants' requirement for housing stability and stress reduction.

34. I am satisfied that the short duration eviction postponement to February 15, 2024 would not be financially unfair to the Landlords, given that the Landlords did not identify financial distress as a reason for the move. I am also satisfied that the eviction of the Tenants, in the short term, is not time critical for the care the Landlords provide to their father and

grandchildren. For these reasons, I therefore find that a slight delay in the Landlords' move to the rental unit would not be unfair to the Landlords, while providing some stress relief to the Tenants before the termination of their tenancy.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 15, 2024.
2. The Landlords shall provide a cheque in the amount of \$1,700.00 to the Tenants on or before January 31, 2024, representing one month's rent compensation.
3. If the unit is not vacated on or before February 15, 2024, then starting February 16, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after February 16, 2024.

January 8, 2024

Date Issued

Frank Ebner

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 16, 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.