



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

CMD

Citation: Sigil v Darley, 2024 ONLTB 41267

Date: 2024-05-31 **File Number:** LTB-L-050100-22-HR

In the matter of: B, 1124 Windermere Road
Muskoka Lakes ON P0B1M0

Between: Juan-carlos Sigil Landlord

And

Janice Darley Tenant

Juan-Carlos Sigil (the 'Landlord') applied for an order to terminate the tenancy and evict Janice Darley (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 10, 2024.

Only the Landlord's Legal Representative, Nathan Korenberg attended the hearing.

As of 9:37 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 Landlord's application is granted, and the tenancy will be terminated.

N12 Notice of Termination – Landlord’s Own Use

2. On August 9, 2022, the Landlord gave the Tenant an N12 notice of termination with a termination date of October 31, 2022. The N12 states that the Landlord requires possession of the rental unit for the purpose of residential occupation for at least one year by the Landlord’s daughter.
3. The Tenant was in possession of the rental unit on the date the application was filed and remained in the unit as of the hearing.

Good faith

4. This N12 Notice was served pursuant to section 48(1)(c) of the *Residential Tenancies Act, 2006* (the ‘Act’) which states:

48(1) A landlord, may, by notice, terminate the 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 off the landlord or the landlord’s spouse;

5. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation for at least one year by the Landlord’s daughter.
6. In the leading case law involving a landlord’s own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that ‘the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal. The Court explained that “once a landlord is acting in good faith, then necessarily from the landlord’s subjective perspective the landlord *requires* the unit for the purpose of residential occupation by a family member. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
7. Therefore, what is required is that the landlord establish that the person indicated on the N12 Notice genuinely intends to live in the property. Nonetheless, where there are other issues, the conduct and motives of the landlord may be considered as part of the good faith analysis. [*Faya v. Harrison*, 2014 ONSC 3352 (CanLII) at paragraph 17, citing *Salter v. Balijinac*, 2001 CanLII 40231 (ON SCDC)].
8. The Landlord’s Legal Representative submitted evidence that the Landlord required vacant possession of the rental unit for his daughter for medical reasons.

9. The landlord's daughter swore a declaration that she intends to move into the rental unit for a period of at least one year. This is consistent with the evidence before me that the Landlord's daughter intends to live in the rental unit for the foreseeable future.
10. Based on the totality of the uncontested evidence before me, I find 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.

Payment of one month's compensation

11. Section 48.1 and 55.1 of the Act provide that a landlord must pay a tenant one month's compensation upon service of an N12 Notice (where no other acceptable unit is offered) on or before the date of termination in the N12 Notice as follows:

48.1 A landlord shall compensate a tenant in an 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.

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

12. The landlord's legal Representative submitted as evidence a copy of a cheque drawn on the Royal Bank of Canada dated October 27, 2022, in the amount of \$952.00 representing one month's compensation.
13. Based on the evidence before me, I find the Landlord did provide the Tenant with one month's compensation as required under section 48.1 and 55.1 of the Act.
14. The Landlord has proven their application and the Landlord's daughter is permitted to reside in the property.

Daily compensation, NSF charges, rent deposit

15. The Tenant was required to pay the Landlord \$13,646.80 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to January 10, 2024.
16. Based on the Monthly rent, the daily compensation is \$31.30. This amount is calculated as follows: \$952.00 x 12, divided by 365 days.
17. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

18. There is no last month's rent deposit.

Relief from eviction

19. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
20. The Landlord has proven their application and based on the evidence before me, I did not find any reason to deny eviction.

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 June 11, 2024.
2. If the unit is not vacated on or before June 11, 2024, then starting June 12, 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 June 12, 2024.
4. The Tenant shall pay to the Landlord \$13,646.80, which represents compensation for the use of the unit from November 1, 2022 to January 10, 2024.
5. The Tenant shall also pay the Landlord compensation of \$31.30 per day for the use of the unit starting January 11, 2024 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The total amount the Tenant owes the Landlord is \$13,832.80. The Tenant shall be credited with any amounts they may have paid the Landlord towards the rent since the hearing of this application.
8. If the Tenant does not pay the Landlord the full amount owing on or before June 11, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 12, 2024 at 7.00% annually on the balance outstanding.

May 31, 2024

Date Issued

Charles Dowdall

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 12, 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.