



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

Citation: Yuffa v Samuel, 2024 ONLTB 6878

Date: 2024-01-25

File Number: LTB-L-056648-22

In the matter of: 3, 217 PANNAHILL RD
NORTH YORK ON M3H4N9

Between: Michael Yuffa Landlord

And

Caroline Samuel Tenant

Michael Yuffa (the 'Landlord') applied for an order to terminate the tenancy and evict Caroline Samuel (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 January 11, 2024.

The Landlord, the Landlord's representative Wendy Burgess, the Tenant, and the Tenant's representative Ross McCurdy attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find that it would not be unfair to postpone the eviction to June 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 31, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of October 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation.

Compensation

4. The Tenant submits that the Landlord's application should be dismissed because the Landlord did not pay the required compensation by the termination date in the N12 notice of termination as required by section 55.1 of the *Residential Tenancies Act, 2006* ('the Act').
5. The Landlord testified that he told the Tenant sometime in October 2022 not to pay rent for November 2022. The Landlord testified that when he became aware that the Tenant had paid for November 2022 he sent the Tenant compensation in the amount of one month's rent by e-transfer on November 4, 2022.
6. The Tenant testified that she was never told by the Landlord not to pay rent for November 2022 and that she did not understand why she was sent one month's rent by the Landlord on November 4, 2022.
7. Section 48.1 of the Act establishes that a Landlord must 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 for personal use.
8. Section 55.1 of the Act says in part that a Landlord shall provide compensation no later than on the termination date specified in the notice of termination.
9. Section 83(4) of the Act says in part that the Board "shall not issue an eviction order" in a proceeding regarding termination of a tenancy for the purposes of residential occupation until the compensation requirement has been complied with.
10. Section 190(2) of the Act allows the Board to extend various timeline requirements in the Act unless the regulations provide otherwise. I note that an extension to pay compensation pursuant to section 55.1 of the Act is not a matter that has been clawed back from the Board's general discretion to extend timelines in O. Reg 516/06.
11. I am not satisfied that the Tenant will suffer prejudice from extending the timeline in which compensation must be provided. In this case, compensation was provided only four days after the date of termination date, the Tenant has not yet vacated and therefore has not yet had to pay for a new rental unit, and the Tenant did not articulate any prejudice she suffered or will suffer from receiving the compensation late. That the Tenant was initially unclear about why the Landlord sent her money does not satisfy me that the Tenant will suffer prejudice from extending the timeline. As such the timeline will be extended in this case.

Good Faith

12. The Landlord testified that he recently inherited the rental property, and he wants to move into the rental unit because he is separating from his wife and needs his own place to live. He testified that his daughter goes to school near the rental unit and there is a synagogue

within walking distance that he can attend. The Landlord testified that he knows people in the area and has some resources and supports in the area. Despite owning other units in the rental property and one other rental property the Landlord testified that this is the unit he wants to move into.

13. Section 48 of the Act establishes that a landlord may, by notice, terminate a tenancy if the Landlord in good faith requires possession of the rental unit for the purpose of their residential occupation for at least one year.
14. When deciding "good faith" I must consider whether the landlord has a genuine intention to occupy the premises. Whether the landlord's plan is reasonable is not the test: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).
15. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the rental unit are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. The Court also stated the LTB can consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.
16. On a balance of probabilities, I find that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year. This is because I found that the Landlord gave credible testimony about his stated intention, as it was offered in a forthright manner and withstood cross examination well. Additionally, while it is not a requirement that a landlord's plan be reasonable the Landlord did provide a reasonable explanation for why he wants to occupy this specific rental unit at this specific time.

Relief from eviction

17. The Tenant has lived in the rental unit since 2004. She has an adult child with autism. The Tenant's son can do some things independently, for example taking the bus, because of the length of time he has had to get comfortable with the rental unit and the neighbourhood. The Tenant testified that change disrupts her son. The Tenant also testified that she has family and medical supports in the area, as well as friends. The Tenant testified that her 15-year-old daughter goes to school in the area.
18. Under cross examination the Tenant testified that she has not investigated alternative living arrangements or made a plan for her son's transition to a new home.
19. The Landlord is currently staying in the basement of the home he shared with his wife and testified that he needs his own private space. The Landlord is opposed to any delay of the eviction beyond March 31, 2024.
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 June 30, 2024 pursuant to subsection 83(1)(b) of the Act. The Tenant has lived in the rental unit for a significant time and will face barriers in finding new

living arrangements and preparing her son for the transition. Delaying the eviction will also allow the Tenant's daughter to finish the school year. However, I will not delay the eviction any further than June 30, 2024 or deny the eviction because I do not find that it would be fair to do so. The Landlord has already waited a significant period to move into the rental unit and is living in a basement unit that does not meet his needs.

Rent Deposit

21. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord.
22. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

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 30, 2024.
2. If the unit is not vacated on or before June 30, 2024, then starting July 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 July 1, 2024.
4. The Landlord shall apply the last month's rent deposit to the last month of the tenancy and pay the Tenant any outstanding interest on that deposit.

January 25, 2024

Date Issued

Amanda Kovats

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.

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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.