



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

Citation: Li v Amador, 2024 ONLTB 12900

Date: 2024-02-21

File Number: LTB-L-037042-23

In the matter of: MAIN FLOOR, 803 SHANAHAN BLVD NEWMARKET
ON L3X1P9

Between: Yaqun Li Landlord

And

Carmen Bertilia Romero Amador Tenants
Lazaro Urbina-Perdomo

Yaqun Li (the 'Landlord') applied for an order to terminate the tenancy and evict Carmen Bertilia Romero Amador and Lazaro Urbina-Perdomo (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 5, 2023 and January 12, 2024.

The Landlord, the Landlord's legal representative, Liam Walker ('LW'), and the Tenant, Lazaro Urbina-Perdomo ('LU'), attended the hearing. The hearing was originally scheduled to resume on November 17, 2023 but was adjourned at the Tenants' request due to a family emergency.

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.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On May 4, 2023, the Landlord gave the Tenants an N12 notice of termination, deemed served on May 9, 2023, with the termination date of July 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and her daughter.

Landlord's Evidence

4. The rent is due on the first day of each month, and at the time the N12 notice was given, this was a month-to-month tenancy.
5. The Landlord is the owner of the rental unit. She said she intends to move into the rental unit with her four-year-old daughter, and that her mother would also stay there sometimes. The Landlord said she and her daughter will live in the rental unit for at least one year.
6. The Landlord said that she had to sell the home that she previously lived in. She said that she was required to sell it because of a separation from her former partner, who was a coowner of that home. The sale was scheduled to close on November 30, 2023, but was delayed to December 15, 2023 because the Landlord was waiting for the outcome of this LTB proceeding. A copy of the Agreement of Purchase and Sale was entered as evidence (DOC-2021615). The Landlord said she believed that she would be in possession of the rental unit by that time.
7. The Landlord said the residential complex is now the only property she owns, and she and her daughter do not have any other place to live for the long term. She said she is now temporarily renting a room in a house and paying rent on a *per diem* basis. She said she and her daughter moved into that accommodation on December 15, 2023, and she is paying \$100.00 per day. A copy of the lease for this temporary accommodation was entered as evidence (DOC-2529648).

Tenant's Evidence

8. LU said that the Landlord wanting possession of the unit to move in has been ongoing since 2020, and that he has a written statement from a former tenant of the basement unit saying the Landlord wanted them to move out to raise the rent because it was too low. The written statement was not entered as evidence, and this basement tenant did not attend to give evidence. It was also not clear where or how the basement tenant purportedly obtained this information. This evidence is hearsay and I do not give it any weight.
9. The Landlord has given the Tenant 4 previous N12 notices. They were all for the same reason, and not pursued because of defects in the notices. LU suggested that this application is retaliatory because the previous N12's were "dismissed". He said there have been "6 or 7" different applications by the Landlord to evict the Tenants based on N12 notices, but he could not provide any LTB file numbers for any of these applications.
10. A search of the rental unit address in the Tribunals Ontario Portal only reveals one previous application (LTB-L-057343-22), which application was withdrawn by the Landlord.

11. LU said he has “video proof” of men attending the rental unit, banging on the door, and telling him to leave. No such video was entered as evidence.
12. LU said there is also a basement rental unit in the house and it has been vacant for over a year. He said that the Landlord and her daughter could simply live there.

Law & Analysis

13. I do not accept LU’s submission that this application is retaliatory and brought because a previous application based on an N12 notice was unsuccessful. This would not make logical sense because the reason for the applications would be consistent. I find that the Landlord is proceeding with this application because her previous N12 notices were defective and therefore invalid. This is not “retaliation”.
14. To prove a fact on a balance of probabilities, there must be sufficient clear, convincing, and cogent evidence: *F.H. v. McDougall*, 2008 SCC 53 (CanLII), para 46.
15. The legal test the Landlord must meet to be successful on this application is that she must prove on a balance of probabilities that she, in good faith, intends to move into the rental unit and live there for at least one year. The test of “good faith” is whether the Landlord has a “genuine intention” to reside at the rental unit, and not the reasonableness of the Landlord’s proposal: *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), para 24; *Fava v. Harrison*, 2014 ONSC 3352 (CanLII), para 17.
16. The Landlord’s motives in seeking possession of the rental unit are also largely irrelevant, though the Landlord’s conduct and motives can be considered to draw inferences as to the Landlord’s genuine intent: *Fava v. Harrison*, 2014 ONSC 3352 (CanLII), para 17.
17. I appreciate the LU’s submission that there is a basement apartment that is vacant and possibly suitable for the Landlord and her daughter, but I do not accept that the Landlord not moving into a basement apartment leads to an inference that moving into the main floor is not her genuine intention.
18. The Landlord’s evidence was clear, convincing, and cogent. She presented reliable documentation in the form of an agreement of purchase and sale and a lease to support her *viva voce* evidence. I accept the Landlord’s evidence that she will move into the rental unit with her daughter and live there for at least one year.
19. The Landlord genuinely intends to move into the rental unit with her daughter, and to live there for at least one year.
20. The Landlord has compensated the Tenants an amount equal to one month's rent by July 31, 2023. This was paid by e-transfer on January 2, 2023. It was originally given in relation to a different N12, but that N12 was defective. The Tenants were given a letter on or about May 4, 2023 from LW’s office advising them that the compensation that had been paid would be applied to the N12 notice on which this application is based.

Relief from Eviction

21. The Landlord said that she and her daughter cannot continue living like this in their temporary accommodation. She said their current accommodation feels like a hotel, and it feels like they need to stay in their room as the house is shared with the landlord. The Landlord said that it is mentally unhealthy for her and her daughter, and that it is particularly mentally difficult for her to have nowhere to go after her separation.
22. The Tenant said that these proceedings have had a significant impact on the mental health of his family and have caused great strain.
23. LU said that the strain on his family has been great both financially and emotionally. He said that the family's school and doctors are nearby, as is the hospital.
24. He lives in the rental unit with his wife and three daughters, aged 14, 15, and 19.
25. He said that if the tenancy is terminated, he would need until September to find new living accommodation for his family.
26. 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 April 19, 2024 pursuant to subsection 83(1)(b) of the Act. This balances the Landlord's need to move into more permanent accommodation with her young daughter, and provides the Tenants with a reasonable amount of time to find new living accommodation.
27. The Tenants were required to pay the Landlord \$11,283.29 in daily compensation for use and occupation of the rental unit for the period from August 1, 2023 to January 12, 2024.
28. Based on the Monthly rent, the daily compensation is \$68.38. This amount is calculated as follows: \$2,080.00 x 12, divided by 365 days.
29. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$239.50 is owing to the Tenant for the period from to July 1, 2016 to January 12, 2024.
30. LW said the rent deposit was applied to the rent for the month of April 2022, but 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. Even if the rent deposit was applied by agreement, parties cannot contract out of their rights and obligations under the Act: ss. 3(1), *Residential Tenancies Act, 2006*.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 19, 2024.

2. If the unit is not vacated on or before April 19, 2024, then starting April 20, 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 20, 2024.
4. The Tenants shall pay to the Landlord \$11,283.29, which represents compensation for the use of the unit from August 1, 2023 to January 12, 2024. Any amount that the Tenants have paid the Landlord for rent for this period shall be deducted from this amount.
5. The Tenants shall also pay the Landlord compensation of \$68.38 per day for the use of the unit starting January 13, 2024 until the date the Tenants move out of the unit. Any amount the Tenants have paid for rent for this period shall be deducted from this amount.
6. The Landlord owes \$2,239.50 which is the amount the rent deposit and interest owing on the rent deposit, and this is deducted from the amount owing by the Tenant.
7. The total amount the Tenants owes the Landlord is \$9,043.79, less any amounts the Tenants have paid the Landlord for rent for the relevant periods as described in paragraphs 4 and 5.
8. The Landlord or the Tenants shall pay the other any sum of money that is owed as a result of this order.

15 Grosvenor Street, Ground
Floor,
Toronto ON M7A 2G6

February 21, 2024

Date Issued

Mark Melchers
Member, Landlord and Tenant Board

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 Tenants expires on October 20, 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.

