



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

Citation: Sivaramalingam v Johnson Tilak, 2024 ONLTB 6027

Date: 2024-02-01

File Number: LTB-L-045667-22

In the matter of: UPPER LEVEL, 87 GUINEVERE RD MARKHAM
ON L3S4R8

Between: Asvni Sivaramalingam Landlord

And

Quincie Juliet Johnson Tilak Tenant

Asvni Sivaramalingam (the 'Landlord') applied for an order to terminate the tenancy and evict Quincie Juliet Johnson Tilak (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 8, 2024.

The Landlord, the Landlord's Legal Representative Thirusenthuran Sivapatham, the Tenant, the Tenant's Legal Representative Sathiyapriya Kalaimathian, the Tenant's daughter Devya Kumariah and the Tenant's husband Balakrishnan Duraisamy attended the hearing.

Preliminary Issues:

1. The Tenant does not speak English fluently and relied on her daughter to interpret her testimony. During the Tenant's testimony, it was discovered that the Tenant was relying on notes placed in front of her and the Tenant's daughter was adding information of her own in her interpretation. Although using notes to refresh memory is acceptable, a witness's testimony must be their own. The Tenant was clearly reading from her notes instead of using them solely to refresh her memory. As a result, I requested the Tenant to remove the

notes and to speak from her own recollection, which she did. I provided several warnings to the Tenant's daughter regarding her interpretation, but the issue continued.

2. After taking a brief recess, I explained to the Tenant's daughter that adding her own information to the interpretation of the Tenant's testimony made her less believable and may adversely affect their position. I provided the Landlord's Representative the opportunity to object to the testimony if the interpretation was incorrect. After the recess, there were no further objections from the Landlord's Representative regarding the Tenant's testimony. I take this to mean that the interpretation became accurate.
3. For the reasons stated above, I find that the Tenant's testimony presented before the recess is not reliable and I give it less weight.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On May 25, 2022, the Landlord gave the Tenant an N12 notice of termination. This notice was later determined to be defective as it did not list the Tenant's name correctly. On July 25, 2022, the Landlord gave the Tenant a second N12 notice of termination deemed served on July 30, 2022 with the termination date of September 30, 2022. The application before me is based on the Landlord's second N12 notice, served on July 25, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation for herself and her child.
4. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of her own residential occupation for a period of at least one year.
5. The Landlord testified that she is currently living at her parents' home which has four bedrooms and a total of seven people occupying the space. The Landlord is a single mother and needs privacy from her family. According to the Landlord, her father is interfering with her life and is pressuring her to move out from his home. The Landlord's strained relationship with her father is causing her much stress and affects her mental health.
6. The residential complex is a house with two rental units. The Tenants do not believe that the Landlord will move into the main floor unit, as it is a four-bedroom, 1,700 square foot space and is too large for the Landlord and her daughter. The Tenants submit that the Landlord should have given an N12 notice to the basement tenants, as the basement unit is a one-bedroom, 900 square foot space. The Landlord testified that the basement unit is too small for her and her daughter and wishes to move into the rental unit on the main floor.

7. On this issue, I rely on *Feeney v. Noble* [1994], in which the Divisional Court writes:

The test of good faith is a genuine intention to occupy and not the reasonableness of the landlord's proposal.

8. The Landlord was consistent in her testimony and re-iterated multiple times that she requires the rental unit for her own occupation even under rigorous cross-examination.
9. I am also mindful of *Fava v. Harrison* [2014], in which the Divisional Court writes at paragraph 17:

We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot 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.

10. As such, I now turn my mind to the Landlord's actions surrounding the eviction proceeding. Under cross-examination, the Landlord testified that she had purchased the rental unit from her father on August 30, 2018, and had occupied the rental unit herself for a period of 2 years starting in the fall of 2018 and vacating shortly before the current Tenants moved in on December 1, 2020.
11. The Tenant's Representative submitted that the Landlord only moved into the rental unit for that time to satisfy the requirement of living in the rental unit for one year after her father gave the previous tenants an N12 notice.
12. The Tenant believes that the Landlord wants to evict her for the purpose of re-renting the unit at a higher price and presented evidence regarding an unlawful rent increase. The Tenant testified that the Landlord and her father came to the rental unit on May 5, 2022, requesting an unlawful rent increase or termination of the tenancy in the alternative. The Tenant agreed to the rent increase and asked the Landlord for a new lease to include her husband's and mother's names as tenants. The Landlord declined to provide a new lease agreement and three weeks after this conversation, the Landlord gave the first N12 notice.
13. In cross-examination, the Tenant testified that the first time the parties had a conversation about the 2022 rent increase was in February 2022, at the time when the Tenant's mother moved into the rental unit. According to the Tenant, she felt coerced to agree to the rent increase, and only agreed on the condition that the lease be amended to include her husband's and mother's names. The first month when the Tenant paid the increased rent was April 2022.
14. The Tenant's husband confirmed the conversation between the parties in May 2022 and that the first conversation about the rent increase occurred in February 2022. The Tenant's husband testified that the first increased rent was charged in May 2022. According to the

Tenant's husband, he knew the rent increase was illegal but did not take any steps to obtain legal advice.

15. Although the rent increase may have been unlawful, I find that it is not related to the eviction. The rent increase conversation first occurred in February 2022, and is related to the Tenant's mother moving into the rental unit rather than the service of the N12 notice. Also, the Tenant paid the rent increase requested. If the Tenant refused to pay, resulting in the Landlord serving the N12 notice, the situation could suggest that the Landlord is acting in bad faith. But given that the Landlord is getting what she wanted, I do not see that increased rent is a motive to evict the Tenant in this case.
16. The Landlord testified that, from the very beginning, she purchased the rental unit with the intention of living in it herself. According to the Landlord, she separated with her partner in May 2019 and lost her employment on August 24, 2020 due to COVID-19. Both of these events put a financial and emotional strain on the Landlord, which caused her to move in with her parents and rent out the unit for the additional income in December 2020. The Landlord's circumstances have since improved; she is currently employed and testified that she can now afford to maintain the rental unit herself once she moves back in. I find that the Landlord's conduct in occupying the rental unit, then having to rent it after two years is reasonable and does not suggest that the Landlord is acting in bad faith. I find the Landlord's testimony credible, and for this reason, I grant the application.
17. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022.
18. The Landlord's Legal Representative confirmed that the rent is up to date.
19. Based on the Monthly rent, the daily compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. The Landlord collected a rent deposit of \$1,450.00 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.

Relief from eviction

23. 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 30, 2024 pursuant to subsection 83(1)(b) of the Act.
24. Section 83(3)(a) of the Act requires the Board to refuse to grant a landlord's application for eviction where the landlord is in serious breach of the landlord's responsibilities or any

material covenant in the tenancy agreement. As such, I considered the Tenant's submissions regarding ongoing maintenance issues in determining whether to deny the eviction.

25. For the following reasons, I am not satisfied that the maintenance issues raised by the Tenant warrant mandatory relief from eviction under section 83(3)(a) of the Act.
26. The Tenant testified that the heating is not working in her children's and mother's room. According to the Tenant, the rooms are cold, and her family is getting sick as a result. The Tenant did not present temperature readings of the rooms. The parties agree that the Tenant complained to the Landlord about heating in March 2023, but not at any point after that.
27. The Landlord testified that she attended the rental unit on March 29, 2023, with a technician who examined the furnace and heating system. The Landlord testified that the house has a natural gas furnace and that, during the March 29, 2023, inspection the heating was working and there was hot air coming from all the outlets. The Landlord testified that the Tenant still complained after the first technician attended so she sent a second technician to the rental unit on April 1, 2023, who replaced the thermostat and confirmed that the heating was working. The Landlord presented two reports from the technicians confirming same.
28. The burden of proof is on the Tenant to show that the Landlord is in serious breach of her obligations under the Act. The Tenant has not presented sufficient evidence to show, on a balance of probabilities, that a heating issue exists, let alone that the Landlord is in serious breach of her obligations. I now turn my mind to delaying the eviction.
29. The Tenant testified that she receives low-income social assistance and works as a parttime caregiver. The Tenant has three children, two of whom are in university nearby and is the primary caregiver for her mother, who needs daily support. The Tenant's mother also receives assistance from a personal support worker. The Tenant is a dialysis patient. The Tenant's husband had a heart attack on July 17, 2023. Both the Tenant and her husband attend the nearby hospital regularly for treatment and check-ups. The Tenant does not drive and needs to stay in the same neighbourhood to be close to the hospital.
30. Although the Landlord is experiencing friction with her family, I find that her circumstances are not urgent. The Tenant is vulnerable due to her health and financial circumstances and has several family members relying on her. Finding a similar home for a large family in the same neighbourhood will be challenging. As such, I find that postponing the eviction is appropriate in this case.

Costs

31. Both the Landlord's Representative and the Tenant's Representative behaved inappropriately at the hearing, which extended the hearing by at least one hour. I do not count the Landlord's Representative's interruptions regarding the Tenant's daughter's interpretation in this analysis, which were relevant and necessary.

32. The Landlord's Representative continually interrupted everyone in the hearing room to the point that I had to mute him during the Tenant's Representative's closing statement to allow her to speak. The Landlord's Representative continued to make submissions on issues after I had already made a ruling on them in his favour.
33. The Tenant's Representative continually made submissions and attempted to testify instead of questioning the witnesses. The Tenant's Representative continually disrupted the proper flow of the hearing and needed to be reminded of the hearing process.
34. I find that each of the representative's conduct resulted in an extra 30 minutes of hearing time, which could have been used to hear other matters. Each representative shall pay \$50 to the Board for the time they wasted.

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 April 30, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 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 May 1, 2024.
4. The Tenant shall also pay the Landlord compensation of \$82.19 per day for the use of the unit starting January 9, 2024 until the date the Tenant moves out of the unit.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. The last month's rent deposit is applied to the last month of the tenancy.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
8. The Landlord's Representative shall pay \$50.00 to the Board on or before February 15, 2024.
9. The Tenant's Representative shall pay \$50.00 to the Board on or before February 15, 2024.

February 1, 2024

Date Issued

Kate Sinipostolova

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.

Payment of the costs must be made to the LTB by the deadline set out above. The fine can be paid by certified cheque, bank draft or money order made payable to the Minister of Finance. If paying in person, the debt can also be paid by cash, credit card or debit card.