



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Ojiede v West, 2024 ONLTB 29404

Date: 2024-04-30

File Number: LTB-L-090934-23

In the matter of: 757 Lincoln Park Avenue
Sarnia ON N7T4Z7

Between: Collins Ojiede Landlord

And

Brandon West Tenants
Samantha Bettencourt

Collins Ojiede (the 'Landlord') applied for an order to terminate the tenancy and evict Brandon West and Samantha Bettencourt (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.

Collins Ojiede also applied for an order requiring Brandon West and Samantha Bettencourt to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on April 16, 2024.

The Landlord, Collins Ojiede, and the Tenant, Samantha Bettencourt, attended the hearing. Samantha Bettencourt appeared on behalf of Brandon West.

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 October 5, 2023, the Landlord gave the Tenants an N12 notice of termination deemed served on October 5, 2023, with the termination date of December 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord compensated the Tenant an amount equal to one month's rent by December 31, 2023.

DID THE LANDLORD GIVE THE N12 NOTICE IN GOOD FAITH?

5. The N12 that was served pursuant to s.48 of the *Residential Tenancies Act* (the 'Act') requires that, in order to be successful in this application, the Landlord must establish that at the time of service of the N12 the Landlord, in good faith, requires the unit of the rental unit.
6. 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.
7. The Landlord submits that he returned to the Sarnia area in January of 2022 after finishing an employment role which took him out of the area. He contemplated evicting the Tenants at that time, but he was a single person, and because the Tenants had a young family, he felt it would be best for him to find his own rental accommodation and continue to allow the Tenants to remain in the rental unit.
8. However, the Landlord's circumstances changed in 2023. The Landlord purchased an income property in Sarnia, which he moved into, with the intention of renovating it and reselling it. The renovations are now complete and to offset his costs, he rented out the basement unit.
9. The Landlord's income property carries a higher mortgage, and the Landlord submits that he cannot afford to service both mortgages – that being the rental unit occupied by Tenants named in this application and the income property. Financially, he has been struggling and this has been intensified as the Tenants have not paid rent for the past six months. The Landlord's evidence is that since the mortgage value on the rental occupied by the Tenants unit is lower, it is more affordable for him to live in.
10. In addition, the Landlord's family composition has changed, and he too now has children. The Landlord's testimony is that the Landlord and his family would like to live in the rental unit, and he would then sell the income property. He submits he has not sold the income property before now because it would leave him with nowhere to live.
11. On the evidence provided, I find the Landlord has proven on a balance of probabilities that he has a genuine, good faith intention to occupy the rental unit for a period of at least one year.

RELIEF FROM EVICTION

12. 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 May 31, 2024, pursuant to subsection 83(1)(b) of the Act.
13. The Tenants submit they have two children aged nine and two. Samantha Bettencourt provided evidence that she has been suffering from health problems which have required

surgery and have left her unable to work. She testified she is on social assistance and is working with community supports to secure housing.

14. Given the circumstances, I find it would be fair to delay eviction until May 31, 2024, to allow the Tenants time to secure new housing arrangements.

REMEDIES

15. The Landlord claimed daily compensation on the application.
16. The Landlord provided evidence that the current rental arrears total \$11,400.00. However, there is no L1 application before me; therefore, I am unable to consider arrears in my calculations.
17. Based on the Monthly rent, the daily compensation is \$62.47. This amount is calculated as follows: $\$1,900.00 \times 12$, divided by $365 \text{ days} \times 107 \text{ days}$.
18. The Landlord collected a rent deposit of \$1,900.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$168.94 is owing to the Tenants for the period from April 1, 2021, to April 16, 2024.
19. 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.
20. The Landlord requests \$1,122.34 in unpaid utilities for water costs that they were required to pay under the terms of the tenancy agreement. However, the Landlord submitted into evidence a water bill from the City of Sarnia which shows an outstanding balance of \$605.02 on October 23, 2023. No other information was provided to substantiate the total claim for \$1,122.34; therefore, I decline to award the total claim. The Tenants must pay \$605.02 to the Landlord for unpaid utilities.

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 May 31, 2024.
2. If the unit is not vacated on or before May 31, 2024, then starting June 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. The Tenants shall pay to the Landlord \$62.47 per day for compensation for the use of the unit starting June 1, 2024, to the date the Tenant moves out of the unit or is evicted by the Sheriff.
4. The Tenants shall pay the Landlord \$6,684.29, which is the daily compensation from January 1, 2024, to April 16, 2024.
5. The Tenants must pay the Landlord \$605.02, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
6. The Landlord owes \$1,900.00 which is the amount of the rent deposit and \$168.94 interest on the rent deposit, and this is deducted from the amount owing by the Tenants.

7. If the Tenants do not pay the Landlord the full amount owing on or before June 1, 2024, the Tenants will start to owe interest. This will be simple interest calculated from May 31, 2024, at 7.00% annually on the balance outstanding.

8.

April 30, 2024

Date Issued

Jane Dean

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 November 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.