



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

Citation: Trevisan v Hunt, 2024 ONLTB 22195

Date: 2024-04-09

File Number: LTB-L-060634-23

In the matter of: 711, 2212 Lake Shore Blvd W
Toronto Ontario M8V0C2

Between: Meaghan Trevisan Landlords

Lorna Myers
Roberto Fontana

And

Jabari Hunt Tenant

Meaghan Trevisan, Lorna Myers and Roberto Fontana (the 'Landlords') applied for an order to terminate the tenancy and evict Jabari Hunt (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 Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 15, 2024.

The Landlord Meaghan Trevisan, the Landlord's Legal Representative Jessica Travers, and the Tenant's Legal Representative Yinka Oyelowo attended the hearing.

Preliminary Issues:

1. The Tenant's Representative requested an adjournment for four reasons. As explained below, I did not find the Tenant's Representative's arguments compelling and dismissed the adjournment request.
2. The first reason for the adjournment request was that the Notice of Hearing was sent to the Tenant but not the Tenant's Representative. This is the common practice of the Landlord and Tenant Board (the 'Board') and is not a valid reason for an adjournment request. The Board is not aware of a party's representative until the representative puts themselves on the record. In fact, per Rule A9.2 of the Board's Rules of Procedure ('Rules'), it is the representative's responsibility to "provide contact information to the tribunal and be available to be contacted promptly. Representatives are responsible for conveying tribunal communications and directions to their client".
3. The second reason was that the Tenant's Representative did not have access to the Tribunals Ontario Portal ('TOP') until shortly before the hearing and was unable to upload evidence. It is common for parties to have technical issues and not have access to TOP; as such, the Board allows various alternate methods for service. Disclosure may be provided by any method allowed under the Residential Tenancies Act (2006) (the 'Act') or the Rules. In particular, a document may be filed with the Board in person, by mail or courier, uploading to TOP, by fax, and by e-mail. The Tenant's Representative e-mailed a request to re-schedule the hearing on January 8, 2024 to the Board, so she was clearly able to submit documents by e-mail. Therefore, I find that the Tenant's Representative did not have issues submitting evidence.
4. The third reason was that the Tenant had a full-day medical appointment in the U.S. on the day of the hearing and was unable to give testimony. The Tenant's Representative submitted a screenshot of a website showing an appointment confirmation for 7:30 AM on the date of the hearing. The screenshot lacks detail, such as the Tenant's full name, the name of the clinic, the reason for the appointment, the date the appointment was scheduled, or the duration of the appointment. The only information apart from the date and start time was the address. Therefore, I was not satisfied that the Tenant had a mandatory medical appointment on the hearing date and was unable to participate as a result.
5. The fourth reason was that the Tenant had filed a separate T2 application against the Landlords. The Tenant's Representative submitted that the matters must be heard together, therefore the L2 application must be adjourned. The request to combine the applications was denied by Vice-Chair Robert Patchett on the request to re-schedule because the applications did not have overlapping issues which could lead to inconsistent findings. I saw no reason to make a finding to the contrary at the hearing.
6. The L2 application was heard at the February 15, 2024, hearing as originally scheduled. To alleviate any prejudice to the Tenant as a result of the matter proceeding in their absence, I allowed the Tenant's Representative to provide information on her client's behalf regarding section 83 issues to the best of her knowledge.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated on May 31, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

The Landlord's Evidence

3. On July 12, 2023, the Landlords gave the Tenant an N12 notice of termination (the 'N12 Notice') with the termination date of September 30, 2023. The Landlords claims that they require vacant possession of the rental unit for their own residential occupation. For the following reasons, I find that the Landlord, in good faith, requires the rental unit for her own residential occupation for at least one year.
4. The Landlord testified that she had a child in November 2023, and served the N12 Notice to the Tenant in advance of the birth so that she and her family could move into the rental unit after the birth. According to the Landlord, she used to work two jobs but is now on maternity leave. Due to the reduced income in the household, she and her family cannot afford to keep living in their current home. The Landlord intends to move into the rental unit for at least the duration of her maternity leave of 18 months. The Landlord plans to sell her current home in order to reduce expenses and save up money to purchase a more affordable house in the future.
5. The Landlord first initiated informal communications regarding the termination of the tenancy in February 2023, but when the Tenant did not move out in the spring of 2023, the Landlord obtained legal advice and issued the formal N12 Notice on July 12, 2023.
6. I find the Landlord's testimony to be credible. The Landlord's testimony was consistent and withstood rigorous cross-examination. I am satisfied, on a balance of probabilities, that the Landlord has the genuine intent to move into the rental unit.

The Tenant's Position

7. The Tenant's Representative took the position that the Landlord's eviction application was retaliatory because the Landlord and the Tenant's girlfriend, Lydia Allen, had a falling out. According to the Tenant's Representative, the Landlord illegally entered the rental unit and Ms. Allen attempted to enforce her legal rights by sending a cease-and-desist letter to the Landlord. The Tenant's Representative submitted that the application must be dismissed under section 83(3)(c) of the Act which states that:

Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that, the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights.

8. All of the Tenant's Representative's submissions regarding the application being retaliatory were relating to the relationship between Ms. Allen and the Landlord, not the Tenant and the Landlord. Therefore, before making a determination on whether the Landlord's application is retaliatory, it is imperative to determine Ms. Allen's involvement in this tenancy.
9. For the following reasons, I find that Lydia Allen is not a tenant.
10. The Tenant's Representative submitted that Ms. Allen is the Tenant's girlfriend and was friends with the Landlord for many years. According to the Tenant's Representative, Ms. Allen always paid the rent in the tenancy, and was responsible for communicating with the Landlord on behalf of the Tenant. The reason that the Tenant entered into the tenancy agreement with the Landlord was that Ms. Allen had a good relationship with the Landlord.
11. The Landlord testified that she rented the unit to the Tenant, Jabari Hunt, and was not aware that Ms. Allen was living with him until March 2023, when the Landlord started to communicate with Ms. Allen regarding the termination of the Tenant's tenancy.
12. The onus is on the Tenant's Representative to show that Ms. Allen is a tenant. The Tenant's Representative did not present any evidence of rent payments made by Ms. Allen or of the Landlord agreeing to rent the unit to Ms. Allen. Ms. Allen was not present at the hearing to provide her testimony on the matter and no reason was provided as to her absence.
13. On a balance of probabilities, I find that the Landlord entered into a tenancy agreement only with the named Tenant, Jabari Hunt. Although the Landlord may have had communications with Ms. Allen regarding the tenancy, I find this does not create a tenancy agreement between them. Rent can be paid on behalf of a tenant. Furthermore, I find the communications between the Landlord and Ms. Allen regarding the tenancy not to be unusual given the relationships between the parties.
14. No evidence was presented of the Tenant attempting to enforce his legal rights. Furthermore, the Landlord's illegal entry into the rental unit allegedly occurred in July 2023, but the Landlord first initiated informal communications regarding termination of the tenancy in February 2023. Therefore, I find that the Landlord's application is not retaliatory, and the application will not be dismissed under section 83(3)(c) of the Act.

Compensation

15. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023 by sending the Tenant an e-transfer on September 29, 2023. The Tenant's representative denied that the Tenant received the compensation. However, the Landlord also presented an e-mail confirmation of the Tenant accepting the e-transfer from September 29, 2023. On a balance of probabilities, I find that the Landlord paid the N12 compensation to the Tenant in accordance with s.48.1 of the Act.
16. There are no rent arrears up to the hearing date.

17. Based on the Monthly rent, the daily compensation is \$65.75. This amount is calculated as follows: \$2,000.00 x 12, divided by 365 days.
18. There is no last month's rent deposit.

Relief from eviction

19. Given my finding 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, the tenancy must be terminated. I now turn my mind to delaying the eviction.
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 May 31, 2024 pursuant to subsection 83(1)(b) of the Act.
21. The Tenant's Representative submitted that the Tenant has a physical disability which makes it difficult to pack belongings and move out of the rental unit. The Tenant received physiotherapy and would need significant assistance to vacate the rental unit. According to the Tenant's Representative, the Tenant is only able to work part-time because of his disability, which reduces his income. Ms. Allen assists with paying the rent but has not been able to work full-time due to stress and the anxiety relating to these legal proceedings, also resulting in reduced income.
22. Given the nature of the Tenant's disability and his financial difficulties, I find it appropriate to postpone the eviction to May 31, 2024, to give the Tenant sufficient time to find affordable alternate housing and to make arrangements to receive assistance with the move.
23. I recognize that this postponement will delay the Landlord's sale of her current house. However, the Landlord could have started selling her current house months ago and made the conscious choice of waiting to put it on the market until after the eviction proceedings concluded. Therefore, I find that the Landlord is not prejudiced by the delay.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant 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 Landlords 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 Landlords on or after June 1, 2024.

4. The Tenant shall pay to the Landlords \$66.75 per day for the use of the unit starting February 16, 2024, and continuing until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlords the full amount owing on or before May 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2024, at 7.00% annually on the balance outstanding.

April 9, 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 December 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.