



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

Citation: Li v Balaisy, 2024 ONLTB 6013

Date: 2024-03-25

File Number: LTB-L-036841-23

In the matter of: 845 PELISSIER ST
WINDSOR ON N9A4L6

Between: Zhi Li Landlord

And

Carl Balaisy Tenant

Zhi Li (the 'Landlord') applied for an order to terminate the tenancy and evict Carl Balaisy (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 9, 2024.

Only the Landlord and the Landlord's Legal Representative, Richard Lammers, attended the hearing.

As of 10:42 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 and the Tenant must move out of the rental unit on or before February 2, 2024.

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

N12 Notice of Termination

3. On May 1, 2023 the Landlord served the Tenant an N12 Notice of Termination with a termination date of June 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of their residential occupation for a period of at least one year.
4. The Landlord has compensated the Tenants an amount equal to one month's rent on July 11, 2023. The Landlord's Legal Representative submitted that a second cheque was sent to the Tenant as she had mis-spelled their name.

Good Faith

5. The N12 was served pursuant to s. 48 of the *Residential Tenancies Act, 2006* (the 'Act'). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that they, in good faith, require the unit for their residential use.
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. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 the Divisional Court determined that while the motives of the landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, in good faith, to occupy the property.

Landlord's Evidence

8. The Landlord testified that she required possession of the unit so that she and her mother can live there. The house has two rental units, consisting of the ground and second floors. The Landlord had initially purchased the house for her parents to live in. At the time of their purchase, the house was already tenanted. She had planned for her mother to live on the ground floor and the tenant on the second floor. As a result of the COVID-19 pandemic, these plans were placed on hold.
9. The Landlord had also considered having her mother move into the second floor unit but did not pursue it due to her mother's mobility issues.
10. The Landlord currently resides and works in the United States. Her plan is to spend the majority of her time at this unit with her mother, to provide her support as her father has passed away. The Landlord can do her work remotely, with occasional in-person meetings. As such, she can spend the majority of her time in Canada. The Landlord stated she has

chosen to not have her mother move to the United States as she would then lose access to Canada's public healthcare system.

11. Pursuant to s. 72(1)(a) of the Act, the Landlord and her mother each provided a signed declaration dated April 30, 2023 declaring their good faith intention to reside in the rental unit for their own personal use for a period of at least one year.
12. The Landlords' Legal Representative stated, pursuant to s. 71.1(3) of the Act, there has been one previous N12 notice served to the Tenant residing in 843 Pellssier Street, which is the second floor of this house, with the first floor municipally addressed as 845 Pellssier Street. This N12 notice was subsequently withdrawn with that Tenant eventually vacating the unit due to rent arrears. That unit has now been re-rented out.

Analysis

13. On the basis of the uncontested evidence provided, I am satisfied that the Landlord genuinely intends to move into the rental unit with her mother. Her testimony was rational and plausible and she was consistent and forthright in describing the situation of the tenants in the house. With regards to her mother not being called as a witness, the Landlord indicated that she has limited ability to communicate in English.
14. The Landlord is currently based in Chicago but her employer permits her to work from home (WFH). As such, on a balance of probabilities I believe she will spend the majority of her time working here in Canada and occasionally traveling to Chicago for in person meetings and training, when required.
15. The withdrawal of the previous N12 notice can be seen in the context of the Landlord changing her mind and deciding the ground floor unit would be more suitable for her mother's needs. In addition, the Landlord had sufficiently explained that due to her personal circumstances she decided to not move into the second floor and is now intending to move into the ground floor unit to minimize mobility issues for her mother.

Daily Compensation and Rent Deposit

16. The Tenant owes the Landlord \$4,872.96 in daily compensation for use and occupation of the rental unit for the period from July 1, 2023 to the January 9, 2024.
17. Based on the \$772.00 rent, the daily compensation is \$25.38. This amount is calculated as follows: $\$772.00 \times 12 \text{ months} \div 365 \text{ days}$.
18. The Landlord is directed to apply any rent paid by the Tenant to the amount ordered below.
19. There is no rent deposit for this tenancy.

Relief from 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

21. It has been approximately seven months since the Landlord filed their L2 application. Moreover, the Tenant did not attend the hearing, so I am unable to assess their circumstances. The Landlord stated she is planning to spend 1-2 months renovating the unit prior to moving in. As such, I do not have evidence provided which would support a delay to eviction of the Tenant.

It is ordered that:

1. The tenancy between the Landlord and the Tenant terminated. The Tenant must move out of the rental unit on or before April 5, 2024.
2. If the unit is not vacated on or before April 5, 2024, then starting April 6, 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 6, 2024.
4. The Tenant shall pay to the Landlord \$4,872.96, which represents compensation for the use of the unit from July 1, 2023 to January 9, 2024.
5. The Tenant shall pay to the Landlord \$25.38 per day for compensation for the use of the unit from January 10, 2024 to the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$4,872.96.
7. The Landlord shall apply any rent paid by the Tenant between July 1, 2023 and the date the Tenant moves out of the unit to the amount owing under paragraph 6.
8. If the Tenant does not pay the Landlord the full amount owing on or before April 5, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 6, 2024 at 7.00% annually on the balance outstanding.

March 25, 2024

Date Issued

Justin Leung

Member, Landlord and Tenant Board

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

File Number: LTB-L-036841-23

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 6, 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.