



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

**Citation:** Nair v Saba, 2024 ONLTB 19346

**Date:** 2024-03-20

**File Number:** LTB-L-013026-23

**In the matter of:** Upper Level, 5367 SEGRIF DR  
MISSISSAUGA ON L5V1Y7

**Between:** Bindu Nair Landlord

**And**

Suher Saba Tenant

Bindu Nair (the 'Landlord') applied for an order to terminate the tenancy and evict Suher Saba and Pawel Cyganski (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 March 7, 2024.

The Landlord's Legal Representative, Liam Walker, and the Tenant attended the hearing.

**Preliminary Issue:**

1. Pawel Cyganski has been removed as a named tenant in this matter.

**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. Therefore, the tenancy is terminated April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

*N12 Notice of Termination*

3. On February 8, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 14, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord, his spouse and his child.

4. The Tenant does not dispute that the Landlord in good faith requires possession of the rental unit for the purpose of their own occupation for a period of at least one year.

#### Compensation

5. It was undisputed that the Landlord gave the Tenant a cheque before the termination date on the N12 notice, the Tenant, however, did not cash the cheque. It was also undisputed that the Tenant refused to accept an electronic bank transfer sent by the Landlord prior to the termination date.
6. I am satisfied the Landlord made every reasonable effort to pay the Tenant the one month's compensation by the termination date. In my view, it was not the Legislature's intention that a tenant could unilaterally frustrate a landlord's good faith attempts to obtain vacant possession by simply refusing to accept the required compensation.
7. Section 190(2) of the Act gives the Board discretionary power to extend the deadline for the payment of compensation contained in s. 55.1 of the Act, to allow the compensation to be paid after the termination date contained in the N12 notice. I find it reasonable in the circumstances to extend the deadline to allow the Landlord to pay the Tenant the one-month's compensation.
8. The Landlord sent an e-transfer to the Tenant during the hearing and the Tenant confirmed receipt of the payment.

#### Daily compensation, NSF charges, rent deposit

9. The Tenant was required to pay the Landlord \$29,465.00 in daily compensation for use and occupation of the rental unit for the period from April 15, 2023, to March 7, 2024. The Landlord testified that the Tenant was up to date with their rent.
10. Based on the Monthly rent, the daily compensation is \$89.83. This amount is calculated as follows: \$2,732.40 x 12, divided by 365 days.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. The Landlord collected a rent deposit of \$2,700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$177.20 is owing to the Tenant for the period from January 15, 2021, to March 7, 2024.
13. 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

14. The Tenant requested the Board exercise its discretion by postponing the eviction by six months.
15. The Tenant testified that she has been unable to locate alternative housing despite working with two realtors and putting in several offers. She stated that the Landlord has been helping her to find a new rental and has also taken her around to see rental units.

16. The Tenant stated that making relocation more difficult is the fact that she suffered a heart attack on February 6, 2023, and was involved in a vehicular accident in September 2023 resulting in neck and lower back injury. The Tenant submitted a doctor's letter dated February 22, 2024, indicating that she is unable to undertake physical activity.
17. The Landlord objects to the Tenant's request for a six-month extension. The Landlord testified that he is currently experiencing significant financial hardship and awaiting possession of his home. He stated that when he and his family returned to Canada from Singapore, they obtained a short-term rental for 40 days at a cost of \$7,000.00. When the Tenant refused to vacate, he and his family secured a rental at \$3,800.00 a month. In addition to monthly rent, the Landlord has been incurring monthly storage fees.
18. The Landlord seeks immediate termination of the tenancy. The Landlord refutes that the Tenant is unable to undertake and physical activity and entered into evidence photographs taken from the Tenant's social media account on October 7, 2023, showing the Tenant taking selfies at the gym by weights. The Tenant did not dispute that she attends the gym but stated that she exercises moderately by walking and doing cardio as it is good for her physiotherapy,
19. I have weighed the circumstances of the Landlord against the circumstances of the Tenant in accordance with subsection 83(2) of the Act and having done so, I find it reasonable and appropriate to postpone the eviction until April 30, 2024, pursuant to subsection 83(1)(b) of the Act.
20. I am of the view that it would be overly unfair to the Landlord to postpone the eviction by six months. The Tenant has had more than a year to secure alternate housing. Given the Tenant partakes in physical activity at the gym, I do not believe it can be said that she is unable to undertake physical activity. There was no evidence before me indicating the Tenant is unable to retain movers or secure assistance with a move. The Landlord has incurred and will continue to incur consider expenses the longer the termination is delayed. I find it reasonable, however, to postpone the eviction to the end of April to allow the Tenant additional time to coordinate a move.

**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 pay the Landlord compensation of \$89.83 per day for the use of the unit starting May 1, 2024, until the date the Tenant moves out of the unit.
5. The Landlord owes \$2,877.20 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.

**March 20, 2024**

**Date Issued**

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Teresa Hunt

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 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.

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