



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

Citation: Kooner v Ahmad, 2024 ONLTB 15996

Date: 2024-03-15

File Number: LTB-L-060139-23

2024 ONLTB 15996 (CanLII)

In the matter of: 4277 SPAGO CRES
WINDSOR ON N9G2Z7

Between: Sarabjit Kaur Kooner Landlord

And

Mazen Ahmad Tenants
Nour Kassem

Sarabjit Kaur Kooner (the 'Landlord') applied for an order to terminate the tenancy and evict Mazen Ahmad and Nour Kassem (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.

This application was heard by videoconference on February 22, 2024.

The Landlord, the Landlord's legal representative, Yunqiao Zhang, and the Tenants attended the hearing.

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 as of June 30, 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On July 31, 2023, the Landlord gave the Tenants an N12 notice of termination with the termination date of September 30, 2023. The Landlord claims that they require vacant

possession of the rental unit for the purpose of residential occupation by the Landlord herself, the Landlord's spouse, and their child.

Good Faith Intention

4. The Landlord testified that she currently lives in Mississauga with her husband. The Landlord testified that she has lived there for approximately 5 years in a house they own. The Landlord stated that she and her husband used to live in Windsor for 35 years when her husband was employed in that city. The Landlord's husband has since retired. The Landlord testified that she wishes to move back to Windsor and occupy the rental unit with her family because she prefers to live in a small city that affords a lower cost of living than Mississauga. The Landlord testified that they have many friends and family in Windsor and that they prefer living in a quieter neighbourhood and in an area with less traffic.
5. The Landlord testified that she and her family will reside in the rental unit for a period of no less than one year and that she plans to sell the home she owns in Mississauga. The Landlord presently works as a PSW in Mississauga but states that she plans to find similar work in Windsor as the need for PSWs is great and she does not anticipate having a difficult time finding work.
6. The Tenants testified that the Landlord served a previous N12 in 2021 stating that her son was going to be moving in. The Tenant stated the Landlord then informed the Tenant's 3 or 4 days later that she was rescinding the notice because her son changed his mind.
7. The Tenants testified that the Landlord asked to increase the rent by \$500.00 two years ago. The Tenants refused this rent increase as it was above the allowable guideline set out by the *Residential Tenancies Act, 2006* (the 'Act'). The Tenant's provided no supporting evidence for this claim.
8. The Tenant's testified they believe the N12 was served so the Landlord can rent out the unit again at a higher rate.
9. The Landlord testified that she never requested a rent increase of \$500.00 as claimed by the Tenant.

Analysis

10. The Courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
11. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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.
12. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely

irrelevant”, however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith. In my view there is no reason why the principles from these cases, which involved applications for the landlord’s own use, are not applicable in a case such as this where the unit is required for the purchaser’s own use.

13. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. The motive is only relevant if it calls into question the central issue of the application, which is whether or not the Landlord and her family genuinely intend to move in.
14. The Landlord’s testimony was that she and her family had originally lived in Windsor for the span of 35 years prior to her husband’s retirement. The Landlord no longer wishes to live in the greater Toronto area where the cost of living is higher, where there are higher traffic volumes. The Landlord also desires to live in a quieter neighbourhood. The Landlord has friends and family and a sense of community within Windsor.
15. The Tenants testified about an attempt by the Landlord to increase their rent by \$500.00 two years ago. The Tenant’s did not support this claim with documentary evidence and the Landlord denied this claim. Even if I were to accept the Tenant’s testimony on this point, I do not find that this on its own is suggestive of the Landlord not having a genuine intention to occupy the rental unit two years later.
16. I am satisfied on a balance of probabilities, that the Landlord and her family in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year.
17. The Landlord has compensated the Tenants an amount equal to one month’s rent by September 30, 2023.
18. The Tenant was required to pay the Landlord \$9,772.60 in daily compensation for use and occupation of the rental unit for the period from October 1, 2023 to February 22, 2024.
19. Based on the Monthly rent, the daily compensation is \$67.40. This amount is calculated as follows: \$2,050.00 x 12, divided by 365 days.
20. The Landlord collected a rent deposit of \$2,050.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$92.42 is owing to the Tenant for the period from October 28, 2021 to February 22, 2024.
21. 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

22. As I am satisfied that the Landlord and her family genuinely require the rental unit for residential occupation, the next issue before me is whether it would be unfair in all the circumstances to deny or delay the Landlord's application for eviction. For the following reasons, I find that it would not be unfair to delay the eviction.
23. The Tenants have lived in the unit since 2019. They reside in the unit with their 5 children ranging in age from 1 year to 15 years old. The Tenants testified that they are on a fixed income and state it is nearly impossible to find a rental unit suitable for a family of 7 within their price range. The Tenants testified that their school age children can walk to school from the rental unit. Only one Tenant is presently working as the other stays home with the children.
24. The Tenants testified that it would be financially devastating to move. They currently pay \$2,050.00 for a 3-bedroom unit. Units in the area that would accommodate the size of their family are going for approximately \$3,000.00 per month. Additionally, the Tenants do not want to disrupt their children's school year as they may need to move to another area to find a suitable rental unit within their price range. The Tenants are requesting until the summer 2024 to vacate.
25. The Landlord presently has a home that she owns and occupies. The only planned use for that home after the Landlord vacates is to put it in the market for sale. There are no disclosed exigent circumstances of the Landlord which require her to have immediate possession of the rental unit.
26. In these circumstances, I find that it is appropriate to delay termination. I find the prejudice faced by the Tenants far outweighs that of the Landlord. The Landlord is not at an immediate risk of homelessness. On the other hand, the Tenants have presented compelling circumstances that warrant a delay in termination.
27. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Act* and find that it would not be unfair to postpone the eviction until June 30, 2024 pursuant to subsection 83(1)(b) of the *Act*.

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 June 30, 2024.
2. If the unit is not vacated on or before June 30, 2024, then starting July 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 July 1, 2024.

4. The Tenants shall pay to the Landlord \$9,772.60 less any amounts already paid, which represents compensation for the use of the unit from October 1, 2023 to February 22, 2024.
5. The Tenants shall also pay the Landlord compensation of \$67.40 per day for the use of the unit starting February 23, 2024 until the date the Tenants moves out of the unit.
6. The Landlord owes \$2,142.42 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
7. The total amount the Tenants owe the Landlord is \$7,630.18.
8. If the Tenants do not pay the Landlord the full amount owing on or before June 30, 2024, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2024 at 7.00% annually on the balance outstanding.

March 22, 2024

Date Issued

Melissa Anjema

Member, Landlord and Tenants 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 Tenants expires on September 27, 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.

