



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

Citation: De Zoysa v Lacey, 2024 ONLTB 13882

Date: 2024-02-29

File Number: LTB-L-054207-22

In the matter of: 302, 558 SENTINEL RD NORTH
YORK ON M3J3R9

Between: Padmalal De Zoysa Landlord

And

Raymond Lacey Tenant

Padmalal De Zoysa (the 'Landlord') applied for an order to terminate the tenancy and evict Raymond Lacey (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 April 5, 2023.

The following people attended the hearing:

The Landlord, Wijemuni De Zoysa.

The Landlord, Padmalal De Zoysa.

The Landlord's legal representative, Harpreet Luthra.

The Tenant, Raymond Lacey.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 25, 2022, the Landlord gave the Tenant an N12 notice of termination served on August 25, 2023, with the termination date of October 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has not proven that they in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
5. The residential complex is semi detached house with five rental units, set up as a rooming house with a shared kitchen. Each rental unit is a self-contained bedroom.

Landlord evidence

6. The Landlord testified that he currently lives in a three-bedroom house with his wife and adult children and required immediate occupation of the rental unit with his wife.
7. I asked the Landlord how long he intended to occupy the rental unit. The Landlord did not immediately answer and eventually stated a couple of years.
8. During the Landlord's testimony he provided shifting and vague details about his reasons he wished to occupy the rental unit.
9. After testifying he required immediate possession of the rental unit, the Landlord provided conflicting testimony and stated he may need to do some repairs on the rental unit before moving in, but he was unsure of what repairs he intended to complete, or when.
10. The Landlord initially stated he wanted the rental unit so he could leave his current house and sell his existing residence. The Landlord stated he may do repairs and sell it later because the Landlord stated he could not afford to keep his house.
11. As of the day of the hearing the Landlord had not listed the house for sale and did not provide any financial evidence to support his claim.
12. When asked what his children will do if he sells his existing house, the Landlord stated it was undecided where his children will go, and he will wait until he occupies the rental unit before deciding what to do.
13. The Landlord went on to testify he needed this specific rental unit because it had a balcony for him to let his dog outside.

14. I also note that the Landlord's claim he intends to move to the rental unit, which is a rooming house, would require the Landlord and his wife to share a kitchen and common area with the other tenants.
15. The Landlord stated that once in the house he would look to seek eviction on the other tenants to take over the entire residential complex but had no definitive timeline.

Tenant evidence

16. The position of the Tenant is he does not believe the Landlord to be genuine in his intent to move into the rental unit.
17. The Tenant testified that he does not find it believable the Landlord intends to leave his three-bedroom home to take occupancy in a boarding house to share common areas with the other existing tenants.
18. Although the Tenant asserts the Landlord has no genuine intention to occupy the rental unit the Tenant did not submit any evidence to the Board to support his claim.

The Act and Analysis

19. Subsection 48 of the Act permits a landlord to give a notice of termination if the landlord meets all of the following requirements:
 - a. In good faith;
 - b. Requires the unit for residential occupation;
 - c. For a period of at least one year;
 - d. By the landlord, a specified family member or a caregiver.
20. In determining this application, the Board has considered a set of legal propositions that apply to landlord applications relying on s. 48 of the Act:
21. The landlord bears the obligation to prove the good faith requirement [Feeney v. Noble, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049]
22. What must be proven is a genuine intention for the relevant family member to move into the rental unit [Feeney v. Noble]; put another way, the evidence must demonstrate that

- the relevant family member sincerely intends to move into the subject rental unit [Rondeau v. Lane, [1993] O.J. No. 1919 (Div. Ct.); Cove Mobilehome Park and Sales Ltd. v. Welch, [1979] O.J. No. 44463 (Div. Ct.)];
23. The evidence does not have to show that moving the family member into the rental unit is the most sensible option [Tarsitano v. Duff, [1988] O.J. No. 1291 (Dist. Ct.)];
 24. The necessity or reasonableness of proposing that the subject family member move into the rental unit (including consideration of the availability of other units for occupancy) and other motives of the landlord are irrelevant if a sincere intention to occupy exists [Fava v. Harrison, [2014] O.J. No. 2678 (Div. Ct.); Tarsitano v. Duff];
 25. However, the landlord's motives and the reasonableness of proposing the move into the subject unit (and the availability of other alternatives) are relevant as circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists [Fava v. Harrison; Clarke v. Bielak, [2003] O.J. No. 4479 (Div. Ct.); Salter v. Beljinac, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)];
 26. Additionally, the landlord's motives and the reasonableness of the proposal are relevant to assessing unfairness to the landlord and the tenant when considering the discretion to delay or deny eviction under s. 83(1), or deciding whether the facts support mandatory denial of eviction under s. 83(3) [Fava v. Harrison]
 27. I find the Landlord's testimony problematic in that as of the day of the hearing he had no concrete plan to occupy the rental unit. The Landlord's shifting testimony and lack of particulars and specific details regarding his plan to move into the rental unit, are such that I am not satisfied the Landlord has met the burden of proof to support his claim.
 28. Given the above, I find on a balance of probabilities with the evidence before me that the Landlord has not provided sufficient evidence to support his claim, that he has a firm intention to occupy the rental unit as of the day of the hearing. If the Landlord had not finalized his plans by the day of the hearing, I find it reasonable to conclude that the Landlord's intentions were not concrete when he served the Tenant the N12 notice that he intended to occupy the rental unit.
 29. For the reasons above, the Landlord's application is dismissed.

Compensation paid

30. It is not in dispute the Landlord has compensated the Tenant an amount equal to one month's rent by October 31, 2022, in accordance with the Act.

31. Since the Landlord's application is dismissed, the Tenant is ordered to return the funds to the Landlord.
32. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
33. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant shall return the compensation paid by the Landlord in the amount of one months rent on or before March 20, 2024.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 20, 2024, the Tenant will start to owe interest. This will be simple interest calculated from March 21, 2024, at 7.00% annually on the balance outstanding.

February 29, 2024

Date Issued

Greg Brocanier

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.