



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

Citation: Deng v Lacroce, 2024 ONLTB 12425

Date: 2024-02-26

File Number: LTB-L-030551-23

In the matter of: 440 VAUGHAN MILLS RD
WOODBIDGE ON L4H1B4

Between: Mo Deng Landlords
Jin Xu

And

Elvira Lacroce Tenants
Frank Lacroce

Mo Deng and Jin Xu (the 'Landlords') applied for an order to terminate the tenancy and evict Elvira Lacroce and Frank Lacroce (the 'Tenants') because:

- the Landlords 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 January 29, 2024.

The Landlords' Legal Representative C.Hu, the Landlords' mother Lei Zheng, Interpreter Lilian Ye and the Tenant Frank Lacroce attended the hearing.

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 as of June 30, 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On April 6, 2023, the Landlords gave the Tenants an N12 notice of termination deemed served on April 11, 2023 with the termination date of June 30, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their parents.
4. The Landlord's mother Lei Zheng testified that she and her husband are going to occupy the rental unit. She testified that the Landlords, their children, live in China. She and her husband take care of their own house and the rental unit. She testified that the Landlords moved back to China in 2017 and the parents pay the mortgage for their property and the rental unit as well. Since they are old and have limited means, with increased mortgages they are finding it difficult to maintain both properties. They have decided to sell their own property and move into the rental unit for the foreseeable future.
5. She testified that the monthly mortgage of their own house is over \$10,000.00 a month plus other expenses and they will put the house for sale once the Tenants vacate the rental unit. Exhibit 1 includes paperwork from the bank showing refinance of the parent's home and the monthly mortgage payments of \$10,962.13.
6. The Tenant questioned the Landlord's mother as to whether they are behind on their mortgage or have listed their property for sale yet. She agreed that they are not and they will list the house once they move. She also reiterated that they decided to make this move in September/October 2022.
7. The Tenant testified that the Landlord approached the Tenants on September 1, 2021 via text that they are in financial difficulties and would like to sell the house and that he authorises the Landlord's mother Ms. Zheng to be the authorized person to deal with it. The house was never listed for sale then.
8. The Landlord then attempted to again sell the house in February 2022. A real estate agent came to look at the house but never listed the property. Finally, the Landlord sent him a text on September 29, 2022 asking that they want the house back for themselves but a N12 was served for Landlord's parents instead on October 6, 2022 with a date of termination of December 31, 2022. He does not believe the Landlord's application is in good faith because of this. He believes the rents in the area have quadrupled since he moved into the property six years and the Landlords only want more rent. The current rent in the area is \$10,000.00 a month compared to his \$2,835.00.
9. He also testified that when the Landlord's mother she came to collect cheques on Landlords' behalf on [date], she extended his lease for two-year term till November 2023. The Landlord's mother denied that she is not well versed with English, and she never agreed to anything. She did sign the paper but there was no written text on it, all she signed was a copy of the twelve cheques received. She believes the Tenant fudged the paperwork after she signed it.
10. I do not find that the parties agreed to an extension of the lease for two years or that the Tenant gave the Landlords two years' worth of post-dated cheques. In the text submitted by the Tenant the Landlord is asking the Tenant to e-transfer the rent for November 2022

since they do not have cheques for that period. I believe that the Tenant only gave cheques for a period of one year starting November 1, 2021 to October 1, 2022. This is largely irrelevant to the application before me.

Analysis and the Law

11. This N12 notice was served pursuant to section 48(1)(c) of *Residential Tenancies Act, 2006* (the 'Act') which states.

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit **for the purpose of residential occupation for a period of at least one year** by,

(c) a child or parent of the landlord or the landlord's spouse; or ...
[Emphasis added]

12. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation for at least one year by the Landlords' parents.
13. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
14. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC)).
15. I find that the Landlords gave the N12 in good faith and their parents genuinely intend to move into the rental unit and live there for at least once year once its vacated. While the Landlords' motives are largely irrelevant, I find that the Landlords' parents intend to move into the unit because they are struggling financially with payments – their own property's mortgage per month and the other expenses.
16. The timelines of the relevant events do not support the Tenant's assertion that the Landlords served the Tenants with this N12 in bad faith. I find the Landlord's mother's testimony to be credible and that the house was never put up for sale despite the fact the parties agreed that the Landlords had expressed some concern about their financial situation in September 2021. In fact, there was some evidence about the Tenants asking for a huge amount in compensation, which was a reason why the Landlords never put up the house for sale.

17. The Landlord's text to the Tenant stating they needed the house for themselves and not for the parents may be explained by the fact that they are not native speakers of English. The N12 was served a few days after the text and since that N12 was defective they had to serve another one. I find that the intention of the Landlord was to express that they wanted the house for their own use as per s.48 of the Act.
18. Based on all the above reasons I do find that the N12 was served in good faith and that the Landlord requires the unit for residential purposes as set out in section 48 of the Act.
19. If the Landlords' parents do not in fact occupy the rental unit after the Tenants vacate they may seek recourse by filing a T5 Application at the LTB..

Daily compensation, NSF charges and rent deposit

20. The Landlords have compensated the Tenants an amount equal to one month's rent by June 30, 2023 via a money order.
21. The Tenants were required to pay the Landlord \$19,852.77 in daily compensation for use and occupation of the rental unit for the period from July 1, 2023 to January 29, 2024.
22. Based on the Monthly rent, the daily compensation is \$93.21. This amount is calculated as follows: \$2,835.00 x 12, divided by 365 days.
23. The Landlords collected a rent deposit of \$2,700.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$282.41 is owing to the Tenants for the period from August 7, 2017.
24. 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.

Section 83 considerations

25. 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 June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
26. The Tenant testified that he is a single father and has three children who go to school in the area. He leaves for work at 5 a.m. because the house is on the school bus route and the children have access to it. A move will be detrimental to his work as he will not be able to work if he has to drop off the children to school in the morning. He also added that his oldest is in high school and he needs until June 2024 at the least for them to finish school. He added the cost of renting is really high in the area as testified above and he is not able to find anything reasonable which can accommodate the family's needs.

27. I also understand that the Landlords' parents are struggling financially but as noted above they are not behind on mortgage, and this delay will give them time to prepare their own house for sale.
28. I find that the Tenants deserves some additional time to move and find an alternate accommodation as this is a long-standing tenancy. I find June 30, 2024 fair date for all parties in the circumstances.

It is ordered that:

1. The tenancy between the Landlords 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 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 July 1, 2024
4. The Tenants shall pay to the Landlord \$19,852.77, which represents compensation for the use of the unit from July 1, 2023 to January 29, 2024 less any amounts already paid by the Tenants.
5. The Tenant shall also pay the Landlord compensation of \$93.21 per day for the use of the unit starting January 30, 2024 until the date the Tenant moves out of the unit.
6. The Landlord owes \$2,982.41 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.

February 26, 2024

Date Issued

Sheena Brar
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 January 1, 2025 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.

