



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

Citation: Di cioccio v Ahee, 2024 ONLTB 9740

Date: 2024-02-09

File Number: LTB-L-073999-23

In the matter of: 207C Woodfield Drive
Ottawa ON K2G4P2

Between: Maico Di cioccio Landlord

And

Kaitlyn Ahee
Ryan Mierzwa Tenants

Maico Di cioccio (the 'Landlord') applied for an order to terminate the tenancy and evict Kaitlyn Ahee and Ryan Mierzwa (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 Tenants did not pay the rent that the Tenants owe.

This application was heard by videoconference on December 12, 2023. The Landlord, the Landlord's son, Adam Di Cioccio ('A.D.C'), and the Tenants attended the hearing.

Determinations:

Personal Use:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is granted, and the Landlord is entitled to an eviction order.
2. The Tenants were in possession of the rental unit on the date the application was filed and the hearing date.
3. On September 12, 2023, the Landlord gave the Tenants an N12 notice of termination with the termination date of November 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child. Pursuant to section 48 (1) (c) of the *Residential Tenancies Act, 2006* (the 'Act').
4. The Landlord has compensated the Tenants an amount equal to one month's rent by November 30, 2023. The Landlord waved rent for the month of October 2023.

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5. The Landlord collected a rent deposit of \$1,100.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$122.66 is owing to the Tenants for the period from April 16, 2017 to December 12, 2023 .
6. 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.

Does the Landlord's Child Genuinely Intend to Move into the Rental Unit?

7. The first question to be determined by the Board on an application such as this is whether the Board believes the person referred to in the notice has a genuine intention to move into the rental unit.
8. The Landlord called his son to testify at the hearing. He says that he had a conversation with his parents about wanting to move out of his parents place, however due to COVID-19, there were some financial restrictions that precluded him from doing so.
9. Currently A.D.C is residing with his parents, who live close to the rental unit. He testified that he is currently working full time and says that it is now time for him to start the next chapter in his life and move out of his parents home. The Landlord and his son plan to do some cosmetic renovations to prepare the rental unit for his son.
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 *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
12. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
13. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

"We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."

14. 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. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
15. I accept the testimony of the Landlord's and their son regarding the intention to occupy the rental unit. The evidence on this point was consistent and therefore reliable. I find on a balance of probabilities the Landlord's child genuinely intends to reside in the rental unit.
16. As there is also an application for arrears of rent, relief from eviction will be discussed below in the order.

Arrears of Rent:

17. At the hearing, the Tenants attempted to raise a number of concerns pursuant to section 82 of the Act:
 - 82 (1) At a hearing of an application by a landlord under section 69 for an order terminating a tenancy and evicting a tenant based on a notice of termination under section 59, the Board shall permit the tenant to raise any issue that could be the subject of an application made by the tenant under this Act if the tenant,
 - (a) complies with the requirements set out in subsection (2); or
 - (b) provides an explanation satisfactory to the Board explaining why the tenant could not comply with the requirements set out in subsection (2)
 - (2) The requirements referred to in subsection (1) are the following:
 1. The tenant shall give advance notice to the landlord of the tenant's intent to raise the issue at the hearing.
 2. The notice shall be given within the time set out in the Rules.
 3. The notice shall be given in writing and shall comply with the Rules.
18. In accordance with section 82(2) of the Act, the Board's Rules of Procedure provide as follows:
 - 19.4. Unless the LTB has directed or ordered otherwise, a tenant who intends to raise issues under sections 82(1) or 87(2) of the RTA during a hearing for a landlord's application about rent arrears shall provide the other parties and the LTB with the following at least 7 days before the scheduled CMH or hearing:
 1. a written description of each issue the tenant intends to raise; and
 2. a copy of all documents, pictures and other evidence that the tenant intends to rely upon at the hearing.

19. The Tenants failed to comply with the notice / disclosure requirements of Rule 19.4. As of the date of the hearing. The Tenants were unable to provide any explanation satisfactory as to why they did not comply with Rule 19.4 of the Act.
20. Therefore, the Tenants were not entitled to raise section 82 issues and the matter proceeded to hear the Landlord's claim for non-payment of rent only.
21. The Landlord served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
22. The lawful rent is \$1,239.00. It is due on the 1st day of each month.
23. Based on the Monthly rent, the daily rent/compensation is \$40.73. This amount is calculated as follows: \$1,239.00 x 12, divided by 365 days.
24. The Tenants have not made any payments since the application was filed.
25. After the application was filed, the Tenant received a credit of \$1,239.00. Which represents the compensation owed pursuant to section 48 of the Act.
26. The parties agree that the rent arrears owing to December 31, 2023 are \$3,717.00.
27. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

Mandatory Relief from Eviction:

28. During the hearing, the Tenants argued that the application ought to be denied under section 83(3)(a) of the Act, which states as follows:
 - (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that ...
 - (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
29. The Tenants submitted that the Landlord was in serious breach of their responsibilities under the Act because they had made a complaint to the Landlord with respect to:
 - (a) Central AC not functioning;
 - (b) Water damage;
 - (c) Hole in the skylight;
 - (d) One non-working toilet
 - (e) Mould-bedroom or bathroom

(f) Vents for heating not working properly

30. However, after canvassing these issues with the Tenants. I am satisfied that this is not a “serious breach” within the meaning of s. 83(a) and decline to deny eviction on this basis. I say this because some of the issues were not on going as of the date of the hearing, the Tenants testified that they still had heat and a working toilet in the rental unit. This finding is not meant to preclude the Tenant from pursuing a maintenance claim in an application before the Board.

Discretionary Relief:

31. 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 August 31, 2024 pursuant to subsection 83(1)(b) of the Act.
32. The Tenants have lived in the rental unit for over 6 years. They testified that they have been looking for alternative accommodations, however given their financial means and poor credit score it is difficult to secure a place. One of the two tenants works a seasonal and/or on call job where the income is not always consistent.
33. The Tenants also proposed a payment plan that would make the Landlord whole within approximately 8 months. Given the quantum of arrears and the length of the plan, I find that it is reasonable.
34. Although I find that the Landlord has a genuine intention for their son to move into the rental unit, he is not facing homelessness that unlike the Tenants. I must balance the rights of both parties, and I find that granting the payment plan and postponing the eviction until August 31, 2024 to be fair in the circumstances. Assumably the Tenants will make the payments and be at a zero balance by the termination of the tenancy and are given some time to find alternative accommodations. The delay is not so extensive that it should severely prejudice the Landlord.

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 August 31, 2024.
2. If the unit is not vacated on or before August 31, 2024, then starting September 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 September 1, 2024.
4. The Tenants shall pay to the Landlord \$3,903.00 for arrears of rent up to December 31, 2023 and costs.
5. The Tenants shall pay to the Landlord the amount set out in paragraph 1 in accordance with the following schedule:

- a) Commencing January 20, 2024, the Tenants shall pay \$500.00 on or before the 20th day of each month, for a period of 7 months (until July 20, 2024).
- b) The Tenants shall pay \$403.00 on or before August 20, 2024.
6. The Tenants shall also pay to the Landlord new rent on time and in full as it comes due and owing for the period January 1, 2024 to July 1, 2024, or until the arrears are paid in full, whichever date is earliest.
7. If the Tenants fail to make any one of the payments in accordance with this order, the outstanding balance of any arrears of rent and costs to be paid by the Tenants to the Landlord pursuant to paragraph 1 of this order shall become immediately due and owing and the Landlord may, without notice to the Tenants, apply to the LTB within 30 days of the Tenants' breach pursuant to section 78 of the Act for an order terminating the tenancy and evicting the Tenants and requiring that the Tenants pay any new arrears, NSF fees and related charges that became owing after December 31, 2023.
8. The Landlord shall apply the last month's rent and any interest owing on the deposit to the last month of the tenancy.
9. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

February 9, 2024
Date Issued

Curtis Begg
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 March 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.