



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Sum v Robinson, 2024 ONLTB 1258

Date: 2024-01-09

File Number: LTB-L-020204-23

In the matter of: UPPER UNIT, 50 HARRISON DRIVE
NEWMARKET ON L3Y4P4

Between: Sarin Sum Landlord

And

Pat Robinson Tenant

Sarin Sum (the 'Landlord') applied for an order to terminate the tenancy and evict Pat Robinson (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.

Sarin Sum (the 'Landlord') applied for an order requiring Pat Robinson (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on October 3, 2023 and adjourned to December 4, 2023. The Landlord, the Landlord's representative, Derek Yaromich, the Landlord's daughter/witness, Lisa Sum, the Tenant and the Tenant's representative, Ademofe Oye-Adeniran 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/or the claim for compensation in the application. Therefore, the application is granted and the tenancy will terminate.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Landlord's Own Use

3. On February 26, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The N12 claims that the Landlord requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord's daughter for a period of at least one year.
4. Lisa Sum is the Landlord's daughter. She testified that she intends to move into the rental unit. She currently resides with her parents which is not suitable as 10 people reside in the

house and she has to share a bedroom with her sister. She was previously living with her aunt and uncle; however, they are separating and she can no longer stay there. She is a nurse and just secured a job in Vaughn and is hoping to secure a job in Newmarket to live close to work. She will be moving into the rental unit with her boyfriend.

5. It was the Tenant's position that the Landlord wants the rental unit because the Landlord attempted to change the terms of the lease agreement by placing 100% of the utility bills on the Tenant in January 2022. The Tenant disagreed with the Landlord and pointed the Landlord to the lease agreement which stipulated that the rent is inclusive of utilities and that any amount over \$175.00 would be split between the Tenant and the occupant of the lower rental unit. In addition, the Tenant does not believe that the Landlord's daughter has a genuine intent to move into the rental unit as she only just recently secured a job and it is in Vaughn not in Newmarket.
6. The Landlord acknowledged that they wanted the Tenant to pay 100% of the utilities however, the Landlord continued with the terms of the lease agreement. They did not agree that they wanted the rental unit back for this reason. The reason they require the rental unit is their daughter graduated from Nursing school and plans to secure a job in the Newmarket area and has been searching and will continue to search for housing close to Newmarket.

Analysis

7. The evidentiary burden rests with the Landlord to establish on a balance of probabilities that the intended occupant will move into the rental unit after the Tenant vacates and remain there for at least 1 year for the purpose of residential occupation.
8. In the leading case law involving a Landlords' own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

"The test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal..."
9. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also held in *Salter v. Beljinac* that the Landlords' motives are "largely irrelevant".
10. I find that the Landlords gave the N12 in good faith and the Landlord's daughter genuinely intends to move into the rental unit and live there for at least once year once its vacated. While the Landlord's motives are largely irrelevant, I find that the Landlord's daughter intends to move into the unit because she currently lives with her parents in a home with 9 other people and has to share a room with her sister.
11. The Tenant has asserted that the Landlord's daughter does not have a genuine intent to move into the rental unit as the required declaration was signed March 7, 2023 and she just recently secured her job in November 2023 and it is not located in Newmarket. She has no ties to the Newmarket community and as such, does not need to move into the rental unit. As set out above, the Landlord does not need to establish that intended occupant requires this specific rental unit, merely that there is a genuine intention to occupy the unit for at least

the year. The testimony of the Landlord's daughter was convincing and has satisfied me as to her intentions.

Daily compensation, NSF charges, rent deposit

12. There is no last month's rent deposit.
13. It was the Landlord's evidence that the compensation was paid by way of the Landlord waiving one months rent. The Landlord sent the Tenant an email on February 25, 2023 stating that the rent for March 1, 2023 would be waived.
14. The Tenant acknowledged receipt of the email dated February 25, 2023 from Landlord that waived one month's rent in lieu of compensation. The Tenant however paid the Landlord the rent for March 2023 anyway.
15. I find that the Landlord has satisfied section 48.1 of the Act by waiving the rent owing for March 2023, which is prior to the termination date of April 30, 2023.
16. The amount of rent the Tenant has paid for March 2023, \$1,598.00 will be applied to the amount the Tenant owes the Landlord for utilities as set out below..

Compensation for unpaid utilities

17. The Tenant failed to pay heat, electricity and/or water costs that they were required to pay under the terms of the tenancy agreement.
18. The Landlord has incurred reasonable out-of-pocket expenses of \$738.84 as a result of the Tenant's failure to pay heat, electricity and/or water costs. The outstanding utilities include Newmarket Hydro, Enbridge and the Newmarket Water bill.
19. The Landlord originally claimed \$1,341.87 however, the Tenant disputed this amount as it included new customer fees and fees for a hot water tank rental which were not part of the rental agreement.
20. The Tenant testified that the Landlord charged the Tenant \$176.26 for the costs of the hot water tank rental and new customer fees from September 2021 to August 2022. The Landlord agreed to pay credit this amount to the Tenant.
21. The parties agree that the Tenant owes \$1093.54 in outstanding utility costs owing to the Landlord for the period September 2022 to August 2023. After the credit of \$176.26, the Tenant owes the Landlord \$917.28.

Relief from eviction

22. 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 March 31, 2024 pursuant to subsection 83(1)(b) of the Act.

23. The Tenant testified that he has experienced unemployment due to COVID-19 and has accumulated a lot of debt and does not have a good credit score which is required to secure a new tenancy. He is currently a committee member with the Community Action Table in Newmarket where he works with vulnerable communities and receives a monthly honorarium. He has a strong connection to the community and as such would like to remain in the Newmarket Heights neighbourhood. The Tenant could not state how long he would need to find a new place to live.
24. I find that a delay in the eviction until March 31, 2024 is fair in the circumstances, so the Tenant can arrange their affairs and 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 March 31, 2024.
2. If the unit is not vacated on or before March 31, 2024, then starting April 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 April 1, 2024.
4. The Tenant owes the Landlord \$186.00 to reimburse for the cost of the application filing fee as the Landlord claimed unpaid utilities and was successful on that portion of the application.
5. The total amount the Landlord owes the Tenant is \$494.72. This amount represents the compensation owing to the Tenant less the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs, less the application filing fee.
6. If the Landlord does not pay the Tenant the full amount owing on or before January 31, 2024, any amount owing by the Landlord may be applied to the rent the rent that becomes due on February 1, 2024.

January 9, 2024
Date Issued

Camille Clyne
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 July 21, 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.