



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

Citation: Amalfa v Deguzman, 2023 ONLTB 81631

Date: 2023-12-18

File Number:
LTB-L-022002-23

In the matter of: Apt 1, 53 Meadowbrook rd Toronto
ON M6B2S5

Between: Massimo Amalfa Landlord

And

Robina Deguzman Tenant

Massimo Amalfa (the 'Landlord') applied for an order to terminate the tenancy and evict Robina Deguzman (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 October 16, 2023.

The Landlord and the Tenant attended the hearing.

The Landlord's child, Vanessa Amalfa (VA), attended the hearing.

Determinations:

1. On February 25, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The Landlord claims that they require vacant

possession of the rental unit for the purpose of residential occupation by the Landlord's child.

2. The rental unit is a two bedroom triplex apartment with one bathroom, kitchen and open living and dining room area.

3. Pursuant to section 48 of the Residential Tenancies Act, 2006 (the 'Act'):

(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 by,
(c) a child or parent of the landlord or the landlord's spouse; or...

(2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

4. Pursuant to section 72 of the Act:

Landlord or purchaser personally requires premises

72 (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

(a) a notice of termination given under section 48 on or after the day section 13 of the Rental Fairness Act, 2017 comes into force, unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a period of at least one year;...

5. Pursuant to section to section 55.1 of the Act:

Compensation under ss. 48.1, 49.1, 52, 54 or 55

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

6. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2023. The Landlord gave a cheque to the Tenant on March 13, 2023.

7. The Tenant does not dispute the Landlord provided her with a cheque, however the Tenant testified she tore up the cheque and therefore while the Landlord has fulfilled his obligation, the Tenant has not received the funds from the Landlord.
8. The Landlord requires vacant possession of the rental unit for his daughter. The Landlord filed an affidavit from his daughter on the same day he filed the application with the Board pursuant to section 71.1(1).
9. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$17.25 is owing to the Tenant for the period from March 2, 2023 to October 16, 2023 .
10. 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.

Good Faith

11. On a balance of probabilities means the Landlord must show that his version of events is the more probable and should succeed. Saying something is proven on a balance of probabilities simply means that it is more likely than not to have occurred. It means that it is probable, i.e., the probability that some event happened is more than 50%--indeed, 50.1% is sufficient. In all cases, the decision maker must weigh up the evidence and decide which version is most probably true. Consequently, the real truth may never be known. All that can be done is to decide which of the parties has presented the most probable version.
12. In considering a landlord's own use application regarding whether a landlord (or a member of her/his family as described in the Act) genuinely intends to move into a rental unit, the Ontario Divisional Court in *Beljinac v. Salter* 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.) ("*Beljinac v. Salter*") referring to Justice Steele's reasons in *Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.), stated that: "...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal." Moreover, in *Kennealy v. Dunne*, the English Court of Appeal pronounced that a landlord need only establish a bona fide wanted and immediate intention to occupy the premises as a residence.
13. The Landlord's daughter VA testified she currently lives with her parents and commutes by public transit to attend her classes. VA testified she requires the rental unit because the rental unit is closer to the university campus, but also close to one of the main subway locations which allows her easier access for commuting to school.
14. The Tenant questioned the reasonability of the Landlord's daughter's need for the rental unit and stated where she currently resides with her father, is not that much further from the rental unit.

15. While the Tenant claims she does not think it reasonable the Landlord's daughter needs the rental unit for the difference in distance, the Tenant did not produce any evidence of bad faith.
16. I am persuaded by AV's testimony and I accept the location is more convenient for her schooling.
17. With the evidence before me and on a balance of probabilities I find the Landlord has met the burden to support his application of requiring the rental unit of residential occupation of his daughter.

Section 83 Relief from Eviction

18. The Tenant testified she has some financial limitations preventing her from being able to find alternative housing. The Tenant had debts due to a family member's health needs several years ago.
19. The Tenant testified she went into debt as a result of the medical bills and subsequently had to file for a consumer proposal in order to consolidate her debts. The Tenant testified she had paid off the proposal as of June 2023, but her low credit score is preventing her from being able to apply to get a loan for a down payment, or seek alternative housing.
20. The Tenant testified she is also still paying a student OSAP loan as part of her financial commitments.
21. Along with the Tenant there are two other adults residing in the rental unit. The Tenant's husband and the Tenant's 25 year old daughter, who is pregnant. The Tenant submitted they are looking for a rental unit to accommodate the three adults and the pending child.
22. The Tenant testified she would need until September 1, 2024 at which time she would be in a better financial situation and she would be able to find alternative housing by this time.
23. On the day of the hearing, the Landlord submitted he was requesting an extended eviction date of January 8, 2024, however after hearing the submissions from the Tenant the Landlord offered a new extended date of March 31, 2024.
24. The Tenant did not wish to consent to this date and requested September 1, 2024.
25. The Tenant is employed as a full time registered nurse, her husband is also employed and her 25 year old daughter is employed in the manufacturing sector. The Tenant did not introduce any evidence to support her claim that she and her family are in a difficult financial situation. In the absence of such evidence, I cannot conclude that eviction would be disastrous for the Tenant and her family.
26. In making my decision I took into consideration the fact that the three adults residing in the rental unit are employed and the fact the Landlord granted a further extension to his original eviction request.

27. In my view, the appropriate outcome is to delay termination of the tenancy and eviction of the Tenant to March 31, 2024 and grant the Landlord his requested extended eviction date. This in my view strikes a fair balance between the rights and interests of the parties taking into account the long duration of the tenancy and the requested eviction dates of both the Landlord and the Tenant.
28. 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.
29. 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.
30. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2024 at 7.00% annually on the balance outstanding.

December 18, 2023

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 1, 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.

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