



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

Citation: Rajalathan v McKenzie, 2023 ONLTB 80674

Date: 2023-12-14

File Number: LTB-L-018277-23

In the matter of: MAIN HOUSE, 56 DUNSFOLD DR
SCARBOROUGH ON M1B1T6

Between: Nirupa Rajalathan Landlord

And

Marva McKenzie Tenants
Michael Johnson

Nirupa Rajalathan (the 'Landlord') applied for an order to terminate the tenancy and evict Marva McKenzie and Michael Johnson (the 'Tenants') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on November 28, 2023.

The Landlord, the Landlord's witness, Prishaa Rajalathan ('PR'), the Landlord's legal representative, Jordan Nieuwhof ('JN'), and the Tenant, Michael Johnson ('MJ'), attended the hearing. MJ stated he was in attendance only on behalf of himself, and not on behalf of the other Tenant, Marva McKenzie ('MM').

As of 9:28 a.m., MM was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. MJ did not know why MM was not present. As a result, the hearing proceeded with only the Landlord and MJ's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On February 28, 2023, the Landlord gave the Tenants 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 PR, who is the Landlord's daughter, and a person who provides or will provide care services to the Landlord's parent.
4. PR said that she is presently renting a different rental unit in Markham, but intends to move to the rental unit to be closer to her grandfather so she can care for him. She said her

grandfather has cancer, and she takes him to his appointments and assists him with his daily activities that he is not able to do on his own.

5. PR said her grandfather lives in Scarborough, which is about a 30-minute drive from her current residence, whereas it is only about 10 minutes from the rental unit. She said she attends her grandfather's home on a daily basis, so the difference in commute time is significant.
6. PR said she is a student, so her mother (the Landlord) is paying for everything. She said her schooling is done virtually.
7. PR said she will likely stay in the rental unit for more than two years. She said that this is a long-term arrangement in terms of living in the rental unit to care for her grandfather. She also said she is in her third year of university, and intends to stay in the rental unit while she completes her degree.
8. PR said she is currently renting the Markham unit from a friend of a friend, and she has arranged to be able to vacate that rental unit immediately once the rental unit is vacant.
9. The Landlord said she is the sole owner of the rental unit, and PR is her daughter. She said the intention is for PR to move into the rental unit so that PR can care for the Landlord's father. The Landlord said that PR was in Thunder Bay for school, but returned to the Toronto area to care for her grandfather when he was diagnosed with cancer, and arranged to complete her schooling virtually.
10. When she initially returned from Thunder Bay, PR went to the family home in Oshawa, but the commute to Scarborough was too hard. Because of this, they found PR's current accommodation in Markham as a temporary measure until the rental unit is available.
11. The Landlord presented medical documentation relative to her father's medical issues, and said that she believed his recovery will take 2-3 years.
12. The Landlord said she is paying for PR's current rent in Markham, which is putting a strain on her financially, because she said the Tenants stopped paying rent after receiving the N12 notice. The Landlord also presented as evidence a letter from her bank about a mortgage default. She said that she has made a temporary arrangement with the bank, but that she cannot continue to pay for the mortgage on the rental unit without rent revenue and also pay for her daughter's rent for her temporary accommodation.
13. The Landlord said that if this application is denied, it would be detrimental to her family, both financially and emotionally.
14. The Landlord said that her father's living situation would not allow for PR to move in with him.
15. MJ only said that he has found a new place to live, and is in the process of moving.
16. I accept that PR genuinely intends to move into the rental unit for a period of at least one year for the purpose of caring for her grandfather. Therefore, I find that the Landlord in good faith requires possession of the rental unit for the purpose of her child's residential occupation for a period of at least one year.
17. The Landlord has compensated the Tenants an amount equal to one month's rent by April 30, 2023. The Landlord presented as evidence a letter dated April 21, 2023 that she said

she gave to the Tenants that same day. The letter states that the compensation due was being paid by forgiving one month's rent arrears because there were rent arrears outstanding at the time.

18. The Landlord collected a rent deposit of \$1,900.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$146.04 is owing to the Tenants for the period from December 1, 2018 to November 28, 2023.
19. 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.
20. 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act. This delay is to allow MM a reasonable amount of time to find new living accommodation.

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 January 31, 2024.
2. If the unit is not vacated on or before January 31, 2024, then starting February 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 February 1, 2024.
4. The Tenants shall also pay the Landlord compensation of \$63.32 per day for the use of the unit starting November 29, 2023 until the date the Tenants moves out of the unit.
5. The Landlord owes \$2,046.04 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
6. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

December 14, 2023
Date Issued

 Mark Melchers
 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 Tenants expires on August 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.