



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

**Citation:** Gill v Murphy, 2023 ONLTB 80184

**Date:** 2023-12-11

**File Number:** LTB-L-000362-23

**In the matter of:** Lower, 1595 TOWNLINE RD  
CAMBRIDGE ON N1T2J3

**Between:** Surinder Gill Landlord

**And**

Ronald Murphy Tenant

2023 ONLTB 80184 (CanLII)

Surinder Gill (the 'Landlord') applied for an order to terminate the tenancy and evict Ronald Murphy (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 3, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented at the hearing by Jackie Struthers. Jaydeep Gill attended the hearing as an interpreter on behalf of the Landlord.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated as set out below.
2. On December 20, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of February 28, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by her son. The Landlord has compensated the Tenant an amount equal to one month's rent by February 28, 2023.

*Landlord's Position*

3. Pursuant to the N12, the Landlord seeks to terminate the tenancy.
4. Harvit Gill testified at the hearing. He is the Landlord's son and the person listed in the N12 who intends to reside in the rental unit.

5. The rental unit has an upper and a lower unit. HG is 31 years old. He lives in the upper unit with his parents. HG told the Board that there are six other people that live in the upper unit. He seeks vacant possession of the lower unit so he can reside there with his girlfriend. He told the Board once he is permitted to move into the rental unit, he plans to live there for a few years.

#### *Tenant's Position*

6. While the Tenant still has possession of the lower unit, he no longer resides in the rental unit. There was a flood in the in the rental unit on October 31, 2022, due a sewage back up. The flood caused the Tenant to be displaced from the rental unit.
7. The Tenant alleges the Landlord's negligence was the cause the flood. He told the Board the Landlord runs a commercial kitchen in the upper unit. The Tenant believes the Landlord's misuse of kitchen upstairs led to the sewer back up. The Tenant filed a Tenant's application. The Tenant believes the application currently before the Board is made in retaliation for filing his own application.
8. The Tenant also believes the Landlord is seeking to evict the Tenant so she can re-rent unit for more money. He also suggests that the Landlord is intentionally making life miserable to force the Tenant to move out.

#### *Analysis*

9. The main issue to be determined is whether the Landlord has established that they in good faith require possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the *Residential Tenancies Act, 2006*. (the 'Act').
10. Section 48 has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the Landlords' intention, nor the fact that the Landlords may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.)).
11. Steele J. in the Divisional Court has stated "... the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal." See *Feeney v. Noble* (1994), 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762 (Div. Ct.) at 764.
12. In *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Court commented: 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.

13. I accept HG's evidence that he plans move into the rental unit with his girlfriend. HG's evidence was unchallenged in cross-examination. He testified in a credible manner, consistent with his declaration provided to the Board prior to the hearing.
14. The Tenant's evidence did not seem to take issue with the fact that HG will move into the rental unit. Instead, the focus of the Tenant's submissions relates to the cause of the flood and Landlord's conduct.
15. The Tenant provided the Board with a lot of general statements about his time in the rental unit. I find these to be bald assertions. No specifics were provided that suggest the notice of termination was served in retaliation to the Tenant filing his application.
16. There is no dispute that there was a flood in the rental unit. The Tenant will have a chance advance his position that the Landlord's negligence caused the flood in his own application. However, the evidence in this application is insufficient for me to find the Landlord willfully caused the flood to force the Tenant to move out.
17. Further, I am unconvinced the Landlord is attempting evict the Tenant, so she rent the unit for more money. The Tenant's own evidence was that the Landlord has not attempted to raise the rent since 2018. Beyond the generalities advanced by the Tenant, I find there to be insufficient evidence that suggest the Landlord served the N12 in attempt to rent the unit for more money.
18. Finally, any issues respecting the Landlord's conduct are not related to the notice of termination. If the Landlord has behaved inappropriately, the Tenant may seek to amend his application and bring those issues before the Board in a subsequent hearing.
19. When I examine the evidence presented, I am not satisfied on a balance of probabilities of the HG's genuine intention to reside in the rental unit. The Landlord's application for eviction is granted.

#### *Relief from Eviction*

20. While the Tenant no longer resides in the rental unit, I find a slight delay in ordering an eviction to be appropriate. This will give the Tenant sufficient time to move any of his remaining belongings from the rental unit.
21. 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.

#### *Daily Compensation*

22. The parties acknowledge the Tenant has not resided in the rental unit since October 31, 2022. In an e-mail to the Tenant the Landlord acknowledges the Tenant is not responsible for paying rent while his not residing in the rental unit. Accordingly, I do not find it appropriate to order the Tenant pay the Landlord daily compensation for use of the rental unit beyond the termination date set out in the N12.

#### *Filing Fee*

23. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
24. There is no last month's rent deposit.
25. in this order pursuant to subsection 83(1)(a) and 204(1) of the Act.

**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 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. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. If the Tenant does not pay the Landlord the full amount owing on or before December 22, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 23, 2023, at 7.00% annually on the balance outstanding.

**December 11, 2023**  
**Date Issued**

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Bryan Delorenzi  
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 , 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.

