



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

Citation: Jorjani v Riad, 2023 ONLTB 41385

Date: 2023-12-07

File Number: LTB-L-030307-22

In the matter of: B, 640 Irwin Cres.
Newmarket ON L3Y5A2

Between: Behnam Jorjani Landlord

And

Angy William Riad Tenants
Magdi William Riad

Behnam Jorjani (the 'Landlord') applied for an order to terminate the tenancy and evict Angy William Riad and Magdi William Riad (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.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on February 7, 2023. The Landlord, Landlord's legal representative M. Bagheri and the Tenants 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 the claim for compensation in the application. Therefore, the Tenancy is terminated as of July 31, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice of Termination - Landlord's Own Use

3. On May 30, 2022, the Landlord gave the Tenants an N12 notice of termination deemed served on that date with the termination date of July 31, 2022. The Landlord claims that they

require vacant possession of the rental unit for the purpose of residential occupation by themselves and their spouse.

Good faith

4. I find that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
5. Both the Landlord and the Landlord's spouse testified that they purchased the property with the intention of taking over the entire premises for their own use. They testified that this was a condition of their agreement of purchase and sale with the previous owner. A previous application for termination filed by the former owner was dismissed due to a technical error in the notice.
6. The Landlord and the Landlord's spouse both testified that they are starting a family and do not wish to be Landlords at all. They have no intention of ever renting out the unit, as they want the entire property for their growing family. This was their intention before taking possession of the property and their intentions have not changed.
7. The Tenant M. Riad testified that he has been a tenant since May 2017 and that he has been a very good Tenant. He believes that because the unit is registered as a legal unit, the Landlords have no grounds to evict him. His daughter was a teenager when they moved into the unit and she still stays with him on occasion at the unit.
8. The Tenant testified that he is well established and settled in the unit and because he is now retired, he is limited with what he can afford at another rental unit. Despite being queried, the Tenant did not indicate how much time he would need to move out of the unit if the application were to be granted.
9. I am satisfied on a balance of probabilities that the Landlord and his spouse genuinely intend to occupy the rental unit for a period of at least one year. I found their testimony direct and credible and accept that they have no intention of being Landlords and that they wish to occupy the entire property solely for their own family.

Compensation

10. Sections 48.1 and 55.1 of the Act require a landlord who has served a tenant with an N12 notice to provide compensation to the Tenant in an amount equal to one month's rent by the N12 termination date. Section 83(4) states that the Board cannot terminate the tenancy if the payment is not made.
11. In this case, the Tenant refused the Landlord's efforts to pay compensation on May 30, 2022.

12. Therefore, in my Interim order issued on May 31, 2023, I ordered the payment of compensation to the Tenant on or before June 15, 2023.
13. The Landlord has provided sufficient evidence to establish that he has paid compensation to the Tenant in accordance with the terms set out in the interim order. The Landlord has also provided a receipt of the delivery of the compensation, signed by the Tenant on June 5, 2023.
14. Having given consideration to all circumstances, I find that is reasonable to exercise my discretion under section 190(1) of the Act to extend the deadline in s. 55.1. The Landlord complied with the interim order to pay compensation to the Tenant and therefore, I find that compensation was paid in accordance with the Act.

Daily compensation, rent deposit

15. The Tenant was required to pay the Landlord \$5,984.32 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to February 7, 2023.
16. Based on the Monthly rent, the daily compensation is \$31.33. This amount is calculated as follows: \$953.00 x 12, divided by 365 days.
17. The Landlord collected a rent deposit of \$953.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$15.81 is owing to the Tenant for the period from December 3, 2021 to February 7, 2023 .
18. 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.

Relief from eviction

19. 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
20. The Tenant is a retired senior citizen who has lived in the unit for 6 years. He is on a fixed income and requires some time to move out of the unit.
21. The Landlord and his spouse are expecting their first child this year. They currently live in the main unit of the rental complex and are anxious to have the entire complex for the sole use of their family.

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 July 31, 2023.

2. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, 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 August 1, 2023.
4. The Tenants shall pay to the Landlord \$5,015.51, which represents compensation for the use of the unit from August 1, 2022 to February 7, 2023, less the rent deposit and interest the Landlord owes on the rent deposit. All rent payments made by the Tenants since August 1, 2022 must be applied to this amount.
5. The Tenants shall also pay the Landlord compensation of \$31.33 per day for the use of the unit starting February 8, 2023 until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before July 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 1, 2023 at 6.00% annually on the balance outstanding.

July 12, 2023

Date Issued

Donna Adams

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 February 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.