



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

Citation: Rahman v Blakely, 2023 ONLTB 77189

Date: 2023-11-30

File Number: LTB-L-021537-23

In the matter of: (Walkout Basement only - Separate Unit), 364 PIONEER DR Kitchener
ON N2P1K6

Between: Mahfuz Rahman Landlord

And

John R Blakely Tenant

Mahfuz Rahman (the 'Landlord') applied for an order to terminate the tenancy and evict John R Blakely (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 5, 2023.

The Landlord and his Representative James Romeo Roussy and the Tenant 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, I will order eviction of the Tenant and daily compensation, with relief from eviction in the form of a delayed eviction.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

Landlord's Own Use

On February 27, 2023, the Landlord gave the Tenant an N12 notice of termination deemed served on the same date 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 his parents.

3. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2023.

4. **Daily compensation, rent deposit**

The Tenant was required to pay the Landlord \$6,882.74 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to October 5, 2023.

5. Based on the Monthly rent, the daily compensation is \$43.56. This amount is calculated as follows: \$1,325.00 x 12, divided by 365 days.
6. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
7. The Landlord collected a rent deposit of \$1,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$51.31 is owing to the Tenant for the period from August 31, 2020 to October 5, 2023.
8. 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.
9. There were essentially two issues for resolution at the hearing:
 - (i) Does the Landlord, in good faith, require use of the rental unit for residential occupation for his parent's use, on a balance of probabilities, for at least one year?
 - (ii) Should I grant relief from eviction?

Does the Landlord, in good faith, require use of the rental unit for residential occupation for his parent's use, for at least one year?

10. As for the first issue, the question is whether the Landlord has a genuine intention to occupy the premises, and not the reasonableness of the landlord's proposal: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).
11. Whether or not the Landlord's intention or motive to occupy the unit is reasonable, is not the issue: *Beljinac v. Salter* (2001), 201 D.L.R. (4th) 744 (ON Div. Ct.).
12. Further, I was referred to paras. 26-27 of that decision which establish that the Tribunal need not enter into an analysis of the Landlord's various options and once the Landlord is

acting in good faith, then it follows that the Landlord does *require* the unit for residential occupation by a family member:

[26] While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal properly stops short of entering into an analysis of the landlord's various options: Ontario Rental Housing Tribunal Interpretation Guidelines (*Eviction for Personal Use*), at p. 3.

[27] Once a landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s. 51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s. 51(1) standard.

13. Finally, the Board can consider the conduct and motives of the Landlord in order to draw inferences as to whether the Landlord desires, in good faith, to occupy the rental unit: *Fava v. Harrison*, 2014 ONSC 3352.
14. Turning to the facts of the case, the Landlord testified that the unit is needed for his parents. His parents now live with him in Waterloo.
15. In terms of why the unit is needed at the present time, the Landlord testified that his inlaws are coming to Canada as PR/immigrants. The plan is for the in-laws to live with the Landlord. As a result, his parents will have to move out of his home and they will occupy the rental unit. This had been planned ahead of time.
16. Declarations were filed by both of his parents that they need the unit for residential occupation for at least one year.
17. The Tenant said he still does not have an N12. But, I am satisfied that he was properly served, with the N12, by having it placed in his mailbox.
18. The Tenant argued that the Landlord had asked him a few times to pay utilities. His case was that the Landlord wants to get more money by putting the unit up for rent. His argument was that if the Landlord cannot afford the utilities, how can he afford to pay the mortgage.
19. The Tenant also argued that due to being in a state of disrepair, the unit was no longer a safe place for the parents of the Landlord to live.
20. In my view, the Landlord has given a truthful account of why he needs the unit, that being, for use by his parents.
21. In my view, the Tenant's argument that the Landlord cannot afford the unit does not stand up to scrutiny. The Tenant has not provided sufficient evidence to prove that the Landlord cannot afford the unit. In any event, that is not the test. The test is whether the Landlord has a genuine intent to occupy the unit for use by his parents, and not whether he can afford it or not.

22. As for the Tenant's argument that the unit is in a state of disrepair, there are two issues.
23. Firstly, the Tenant did not serve the Landlord with any evidence that the Landlord was in breach of his maintenance obligations under s. 82 of the *Residential Tenancies Act, 2006* (the "Act"). Although the Tenant did file his evidence with the LTB, he is required to serve the evidence with Landlord or provide an explanation satisfactory to the Board explaining why the Tenant could not comply with the requirements set out in the Rules. He did not serve the evidence or provide such an explanation, other than to say he did not know he had to do so. In my view, this explanation is not satisfactory because the Tenant should have known, from the information the LTB served on him, that he was required to serve the Landlord with his evidence.
24. Secondly, as a result, his evidence that the Landlord was in breach of his maintenance obligations cannot be considered further in this application as a stand alone application, but will be relevant in my consideration of relief from eviction.
25. I find, on a balance of probabilities, that the Landlord does require the unit for residential occupation by his parents for at least one year.

Should I grant relief from eviction?

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.

26. In considering relief, I must consider the Tenant's evidence, to determine whether the landlord is in serious breach of the Landlord's responsibilities under the Act or of any material covenant in the tenancy agreement.
27. The Tenant has raised various issues, but in my view, they do not amount to a serious breach of the lease or the Act.
28. For example, a sliding door on the shower needs repair. But repair is needed and I am prepared to order such.
29. There were two water leaks in the past. But there was no evidence that this is currently an issue.
30. The broken foot of the fridge may be annoying, but cannot be classified as a serious breach.
31. The Tenant also claims the Landlord illegally entered his unit, but he has not filed an application for that claim.
32. Then, he says the fan on the fire place does not work. The thermostat is used by the tenant upstairs, and the Tenant has no control over the heat or air conditioning. But there was no evidence that the heat was below what it was required to be, as set out in O. Reg. 516/06, s. 4, at 20 degrees Celsius from September 1 to June 15.

33. Nonetheless, the Landlord is required not to withhold any vital services under the Act, including hot or cold water, fuel, electricity, gas and heat (see s. 2 of the Act). Further, pursuant to s. 21(1) of the Act:

A landlord shall not at any time during a tenant's occupancy of a rental unit and before the day on which an order evicting the tenant is executed, withhold the reasonable supply of any vital service, care service or food that it is the landlord's obligation to supply under the tenancy agreement or deliberately interfere with the reasonable supply of any vital service, care service or food.

34. In my view, the fact that a source of the Tenant's heat is not working, with winter approaching in a basement unit is a problem. As a result, I will make an order for the Landlord to fix this. However, as the Tenant has not led evidence that the heat is less than the statutory requirement, or when it has been below the requirement, I will only rely on this as a factor in considering relief, and not as ground for abatement of rent under s. 82 of the Act, as I noted above.
35. The Tenant claims he cannot park in the garage, but there was no evidence that the lease gave him the right to do so.
36. Based on the cumulative effect of the issues identified above, I am prepared to postpone eviction to January 31, 2024.

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. 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 Tenant shall pay to the Landlord \$6,882.74, which represents compensation for the use of the unit from May 1, 2023 to October 5, 2023.
5. The Tenant shall also pay the Landlord compensation of \$43.56 per day for the use of the unit starting October 6, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.
7. The Landlord owes \$1,351.31 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The total amount the Tenant owes the Landlord is \$5,717.43.

9. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2024 at 7.00% annually on the balance outstanding.
10. The Landlord shall, on or before December 10, 2023, fix the fan on the Tenant's fireplace.
11. The Landlord shall, on or before December 10, 2023, fix the door of the shower.

November 30, 2023

Date Issued

James Campbell
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 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.