



Order under Section 69  
Residential Tenancies Act, 2006

Citation: Lin v Fang, 2023 ONLTB 77363

Date: 2023-11-27

File Number: LTB-L-022151-23

In the matter of: 5148 PORTER STREET, MASTER ROOM OF UPPER LEVEL BURLINGTON  
ON L7L6K8

Between: Long Lin Landlord

And

Zhi dan Fang Tenant

Long Lin (the 'Landlord') applied for an order to terminate the tenancy and evict Zhi dan Fang (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 18, 2023.

The Landlord and the Landlord's Legal Representative, H. Zhou 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 in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 11, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.

4. The Landlord testified that he is currently lives in Toronto with his parents. He testified that he works in Toronto. He testified that he has a lot of issues with his parents, and they fight a lot. He requires the rental unit for that purpose.
5. The Tenant testified that he does not believe that the Landlord will move into the unit as he was served a previous N12 notice of termination in July 2022, and the Landlord advertised the unit for rent after service of that notice. He testified that he does not trust the Landlord will move into the unit as a result.

#### Analysis

6. The Courts have provided much guidance to the Board in interpreting the “good faith” requirement in the context of a Landlord seeking possession of a rental unit for the purpose of residential occupation by the Landlord.
7. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

“...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal”.
8. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the issue under subsection 51(1) of the Tenant Protection Act, 1997, S.O. 1997, c. 24. The court referred to *Feeney*, supra, and held that:

“...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA.”
9. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Residential Tenancies Act, 2006, found as follows:

“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.”
10. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
11. The Tenant testified that the Landlord served a previous N12 notice of termination in July 2022, and then proceeded to list the unit for rent. The Tenant did not provide evidence of such listings to substantiate that allegation. The previous N12 notice of termination went to a hearing in March 2023, and was subsequently dismissed as the Landlord failed to pay the required compensation to

the Tenant. The Landlord then served the N12 notice of termination that is subject to this application.

12. The Landlord testified that he requires the unit for his own use due to a breakdown in his relationship with his parents with whom he currently resides. I have no reason to doubt the testimony of the Landlord on this point.
13. Based on the evidence before me, I find on a balance of probabilities that the Landlord, in good faith, intends to occupy the unit for a period of at least one year.
14. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2023.
15. The Landlord collected a rent deposit of \$1,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$43.97 is owing to the Tenant for the period from January 15, 2022 to October 18, 2023.
16. 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

17. The Tenant has lived in the unit since January 2022. He testified that he has tried to look for other units, but compared to what he is paying now, they are not affordable. The Tenant is requesting 1 year to vacate the rental unit.
18. The Landlord submits that the Tenant has already had 7 months to find another place to live and no further delay is warranted.
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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act. Although the Landlord submits that Tenant has already had sufficient time to find a new place to live, I find that the prejudice faced by the Tenant if I were to terminate the tenancy with the standard time outweighs that of the Landlord. The Landlord may find it uncomfortable residing with his parents due to fighting, but Landlord is not at risk of homelessness if I delay the termination. I find that delaying the termination until January 31, 2024 is fair in all the circumstances.

#### 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.

November 27, 2023

Date Issued

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Emily Robb

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 June 9, 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.