



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

Citation: Phan v Rusu, 2023 ONLTB 73225

Date: 2023-11-09

File Number: LTB-L-019789-23

2023 ONLTB 73225 (CanLII)

In the matter of: 94 GLENNGARRY CRES
MAPLE ON L6A4Z4

Between: Gim Kim Phan Landlords
Suk Ching Kung

And

Stefan Rusu Tenants
Andra Rusu

Gim Kim Phan and Suk Ching Kung (the 'Landlords') applied for an order to terminate the tenancy and evict Stefan Rusu and Andra Rusu (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 Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on October 3, 2023. The Landlords, The Landlords' representative, Elaine Page and the Tenants, Stefan Rusu attended the hearing.

Determinations:

1. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore, the application is granted and the tenancy will terminate.
2. The Tenants were in possession of the rental unit on the date the application was filed.

Landlords' Own Use

3. On February 21, 2023, the Landlords gave the Tenants an N12 notice of termination with the termination date of June 30, 2023. The N12 claims that the Landlord requires vacant possession of the rental until for the purpose of residential occupation by the Landlord for a period of at least one year.
4. The Landlords compensated the Tenants an amount equal to one month's rent by June 30, 2023. The Tenant confirmed receipt of the cheque however have not yet cashed it.
5. The Landlords testified that they require the rental unit for their own use as it is close to the GO Transit station and the Landlord's spouse takes the transit to work every day. In addition, the Landlord borrowed money from their mother-in-law to purchase the house and would like to manage their financial responsibilities and repay the loan to their mother-in-law. At one point in 2022, they did have plans to sell the home due to high interest rates however, they changed their plans and intend to sell the current house where they reside and move into the rental unit.
6. The Landlords confirmed that they did have 3 properties. The rental unit, their current resident which they intend to sell and a 1-bedroom unit condo unit that cannot accommodate their family of four.
7. It was the Tenants' position that the Landlords want the rental unit vacant in order to sell the house. The Landlords has previously provided the Tenant with an N11 to the Tenant however, it was not signed by the Tenant. The Tenant did offer documentary evidence to support their assertion that in and around December 2022 the Landlords emailed them to attempt to have the Tenant vacate the rental unit in order to sell the rental unit.
8. The Tenants also testified that the Landlord has multiple rental units and do not require this property in good faith.
9. The Tenant testified that the Landlords have previously indicated that they were in financial difficulty and were going to sell the house. The Landlord disputed this allegation maintaining that they would be moving from their current resident which they intend to sell move to the rental unit for ease of work commute.
10. The Landlord did not dispute the emails from December 2022 however, asserted that they did want to sell the rental unit but have now decided that they would sell their current home and move into the rental unit.

Analysis

10. The evidentiary burden rests with the Landlords to establish on a balance of probabilities that they will move into the rental unit for at least 1 year for the purpose of residential occupation.

11. In the leading case law involving a Landlords' own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

“The test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord’s proposal...”

12. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords’ motives are “largely irrelevant”.

13. 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.

14. I find that the Landlords have established that they gave the N12 in good faith and genuinely intend to move into the rental unit and live there for at least one year once its vacated. While the Landlord’s motives are largely irrelevant, I find that the Landlord intends to move into the unit because the Landlord’s would like to manage their financial responsibilities and repay a loan that was extended to them from their mother-in-law to purchase a home. In addition, moving into the rental unit would assist in their daily commute of the Landlord’s wife as it is closer to the GO Transit station.

15. With respect to Landlords efforts to get the Tenants to vacate the rental unit in 2022 in order to sell it, I find that the Landlord has established that they will sell their current residence and move into the rental unit and will not likely sell the rental unit as the Tenant has indicated.

Daily compensation, NSF charges, rent deposit

16. The Tenants were required to pay the Landlords \$7,558.92 in daily compensation for use and occupation of the rental unit for the period from June 30, 2023 to October 3, 2023. All rent payments made by the Tenants since June 30, 2023, must be subtracted from this amount.

16. Based on the Monthly rent, the daily compensation is \$79.57. This amount is calculated as follows: \$2,420.18 x 12, divided by 365 days.

17. The Landlords collected a rent deposit of \$2,300.00 from the Tenants and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$96.10 is owing to the Tenants for the period from February 1, 2022 to October 3, 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 January 31, 2024 pursuant to subsection 83(1)(b) of the Act.
20. The Tenant testified that he lives and works in the community and his two children ages 8 and 10 are in a gifted program. Locating to a new residence would prove difficult as the children's schooling would need to fall in line with their academic aptitude as it is only offered in certain schools in the region. The Tenant requested a delay to the end of the school year in June 2024 if eviction were granted.
21. I find it would be unfair to grant the lengthy delay the Tenants requested. The Tenants have been provided a notice of termination with a termination date of June 30, 2023. The Landlords have already considered terminating the tenancy at the end of the school year which the Tenants did not take into consideration. Therefore, I find a delay to January 31, 2024 is fair in the circumstances so that the Tenant can arrange their affairs and move.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords 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 Landlords on or after February 1, 2024.
4. The Tenants shall pay to the Landlords \$7,558.92, which represents compensation for the use of the unit from July 1, 2023 to October 3, 2023. All rent payments made by the Tenants since June 30, 2023, must be subtracted from this amount
5. The Tenants shall also pay the Landlords compensation of \$79.57 per day for the use of the unit starting October 4, 2023 until the date the Tenants moves out of the unit.
6. The Landlords owes \$2,396.10 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.
7. The total amount the Tenants owe the Landlords is \$5,162.82.

8. If the Tenants do not pay the Landlords the full amount owing on or before January 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from No February 1, 2024 at 7.00% annually on the balance outstanding.

November 9, 2023

Date Issued

Camille Clyne

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 May 21, 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.