



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

Citation: Fadaiefard v Geller, 2023 ONLTB 72451

Date: 2023-11-03

File Number: LTB-L-059959-22

In the matter of: 74 STOYELL DR
RICHMOND HILL ON L4E0M7

Between: Aryana Fadaiefard Landlord

And

Gelena Geller Tenant

Aryana Fadaiefard (the 'Landlord') applied for an order to terminate the tenancy and evict Gelena Geller (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.

This application was heard by videoconference over two days on June 28, 2023 and October 24, 2023.

The Landlord, his representative Fred Suter, and the Tenant attended both hearing days.

Determinations:

Confidentiality Order Denied

1. At the outset of the hearing the Landlord requested a confidentiality order limiting public access to the adjudicative records as many of the exhibits relied upon by the parties are personal in nature to the Landlord. This includes documents from the Landlord's employer, doctor, and accountant, among others.
2. The Tribunal's adjudicative records are generally open to the public, in accordance with the open court principle: [See *Sherman Estate v. Donovan*, 2021 SCC 25 (CanLII) at para. 30 where the Supreme Court affirmed that "openness is protected by the

constitutional guarantee of freedom of expression and is essential to the proper functioning of our democracy”].

3. As public access to adjudicative records is protected by s. 2(b) of the *Charter of Rights and Freedoms*, restrictions on access are exceptional. Pursuant to s. 2(2) of *Tribunal Adjudicative Records Act* (‘TARA’), the Tribunal may order that all or part of an adjudicative record be treated as confidential and not disclosed to the public if the tribunal determines that:
 - a. matters involving public security may be disclosed; or
 - b. intimate financial or personal matters or other matters contained in the record are of such a nature that the public interest or the interest of a person served by avoiding

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disclosure outweighs the desirability of adhering to the principle that the record be available to the public.

4. The test established by the Supreme Court of Canada in *Sherman Estate v. Donovan*, for discretionary limits on court openness provides further guidance when considering whether to override the principle that tribunal hearings should be open to the public. In order to succeed, the person asking a court to exercise discretion in a way that limits the open court presumption must establish that:
 - a. court openness poses a serious risk to an important public interest;
 - b. the order sought is necessary to prevent this serious risk to the identified interest because reasonably alternative measures will not prevent this risk; and
 - c. as a matter of proportionality, the benefits of the order outweigh its negative effect.
5. The person seeking to restrict access has the onus to displace the general rule of openness.
6. I do not find that the Landlord has met the threshold for a confidentiality order. The termination letter is already heavily redacted, the letter from the accountant and real estate agent do not contain significant personal information, and the medical letter while it does provide some personal details it does not rise to the threshold required to meet the tests found in either TARA or the Sherman case.
7. For those reasons the Landlord’s request for a confidentiality order is denied.

The Application

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated February 29, 2024.
9. The Tenant was in possession of the rental unit on the date the application was filed.

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10. On July 25, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for themselves.
11. The Landlord testified that he wants to move into the rental unit because of financial difficulties he is facing. The Landlord lost his job and seeks to sell the current property he lives in to pay off outstanding debt. The Landlord testified that he wants to move into the cheaper of his two properties which is the rental unit.
12. The Tenant argues that the Landlord does not in good faith intend to move into the rental unit because his financial situation is not as dire as presented. Through cross examination of the Landlord the Tenant established that the Landlord is likely coming into a large compensation package from his previous employer as he is currently fighting his termination in the courts, the Landlord has a significant amount of equity in his two homes, and the Landlord has redacted or not provided significant detail about his income and outstanding debts.
13. On a balance of probabilities, 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. This is because I found the Landlord credible in his testimony regarding his intentions. The Landlord's testimony was also bolstered by supporting documentation in the form of a termination letter from his employer, a letter from his accountant, a letter from his doctor, and a quote for moving expenses the Landlord obtained.
14. I agree with the Tenant that the Landlord will likely be receiving a settlement from his previous employer, has substantial equity in his two homes, and could potentially afford to sell his second home to buy another one. However, when deciding "good faith" I must consider whether the landlord has a genuine intention to occupy the premises. Whether the Landlord's plan is reasonable is not the test: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC). I accept that the Landlord did lose his job and has decided that his best financial option is to sell his current residence to downsize. That the Landlord potentially has other options does not mean he is being insincere about his intentions.
15. In *Fava v. Harrison*, 2014 ONSC 3352, the court stated that the LTB can 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. I do find that the Landlord was somewhat evasive to the Tenant's detailed questions about his finances and that the Landlord did not disclose some documents that are relevant to his financial status. However, I am not satisfied that means the Landlord is lying about wanting to move into the rental unit. The Landlord throughout his testimony was clearly uncomfortable sharing personal details about his mental health and financial status. The Landlord even asked for a confidentiality order for this reason. I found the Landlord's lack of desire to talk about the details of his financial status more consistent with him wanting privacy rather than the Landlord having a deceptive intent.

16. For all of those reasons I find on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of his own residential occupation for a period of at least one year.
17. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022. The Landlord did this by explicitly waiving rent arrears for November 2021 and sending the Tenant an e-transfer for the difference in rent between what was charged in November 2021 and what was charged when compensation was given (\$26.14). The Tenant did not accept the e-transfer. While the Landlord has already satisfied the compensation requirement of the Act by sending the payment, the Landlord is to resend the Tenant the remaining \$26.14 of compensation she is entitled to by November 30, 2023.

Relief from eviction

18. The Tenant requests that the eviction be postponed until at least the end of June 30, 2024 for her teenage child to finish high school and for the Tenant to find somewhere new to live. The Tenant testified that she has poor credit, is at the start of a new job in the probationary period, is recovering from recent surgery, and is going to have to move significantly out of her desired neighbourhood to find something she can afford.
19. The Landlord is opposed to any delay of the eviction because 13 months have already passed since the termination date in the N12 notice and the Landlord has been eagerly waiting to move into the rental unit to improve his current financial situation.
20. 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 February 29, 2024 pursuant to subsection 83(1)(b) of the Act. This is to provide the Tenant with time to find new living accommodations. However, I declined to delay the eviction by the 8 months requested by the Tenant because the Landlord has already waited a significant amount of time to move into the property and is facing financial struggles of his own.

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 February 29, 2024.
2. If the unit is not vacated on or before February 29, 2024, then starting March 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 March 1, 2024.

4. On or before November 30, 2023 the Landlord shall resend to the Tenant the remaining \$26.14 of compensation the Landlord already sent to the Tenant.

November 3, 2023

Date Issued

Amanda Kovats

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 September 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.