



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

Citation: Kelford v Yiu, 2023 ONLTB 71251

Date: 2023-11-02

File Number: LTB-L-027957-23

In the matter of: BASEMENT, 58 HARRIET STREET
TORONTO ON M4L2E9

Between: Stephanie Anne Kelford Landlord

And

Jennifer Yiu Tenant

Stephanie Anne Kelford (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Yiu (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 on October 10, 2023. The Landlord, the Tenant and the Tenant's witness, B. Suter, attended the hearing.

Preliminary Issue:

1. The Tenant made a request to adjourn the application to be heard with her Tenant application. The Tenant's application was filed on the day of the hearing. The issues in the application are regarding illegal entry, parts of her kitchen and bathroom are unusable, the bathroom sink is leaking, the kitchen sink was leaking, loss of space due to Landlord's storage, Landlord said things that were untrue / threatened the Tenant.
2. The Tenant's adjournment request was denied. The fact that the applications deal with the same unit and parties does not automatically warrant them being heard together. The test is whether there is sufficient overlap in the issues to be decided or hearing them separately would result in inconsistent results. In my view, the only way that this would be possible in these applications is if the Tenant is raising serious and ongoing issues in the tenancy in their application to warrant mandatory relief from eviction in the present application. Based on the description of the issues from the Tenant, while these issues may constitute breaches of the *Residential Tenancies Act, 2006* (the 'Act'), which I make no determination

here, I do not find them to be serious and ongoing to meet the test of mandatory relief from eviction. Therefore, I do not find that there is sufficient overlap, and the adjournment request is denied.

Determinations:

3. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of December 31, 2023.
4. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

Landlord's Own Use

5. On April 4, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and their child.
6. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2023.
7. The Landlord filed a declaration specifying that she in good faith requires the rental unit for her own use for a period of at least one year.

Good Faith

8. The only remaining issue to be determined is whether the Landlord requires the unit in good faith.
9. The rental unit is located in the basement of a house. The Landlord currently resides on the main and upper floor with her two children. There are three bedrooms.
10. The Landlord bears the obligation to prove the good faith requirement and is required to establish that the person purporting to live there genuinely intends to live in the rental unit for at least one year. The Landlord's motives are only relevant as evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists¹.
11. The Landlord testified that she sleeps in the master bedroom, the Landlord's youngest sleeps in the second bedroom, and the third bedroom is used for a home office. She states that her eldest son presently sleeps in the family room. As the Landlord's children are

¹ *Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct); *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)

teenagers, they all require more space. Her eldest son will sleep in the basement and the Landlord will access the unit as many of her items are stored there.

12. The Tenant disputed the Landlord's good faith intent. They testified that they were provided different reasons for why the Landlord requires her rental unit. On June 1, 2022, they were told by the Landlord that she has furniture and items from the cottage that require storage in the unit. On September 1, 2022, they were told that the Landlord wanted to move her son's desk and computer stuff to their unit. On March 21, 2023, they were told that the Landlord wanted the unit for her family's use and added that she didn't have the bandwidth or funds to maintain the rental space. The Tenant also stated that they do not believe the Landlord's eldest is sleeping on the couch.
13. The Tenant's witness, B. Suter, testified to the living arrangement at the house. He is the ex-spouse of the Landlord and is on title for the house. He said that before their separation, they lived comfortably in the upper and main floor. He acknowledged at this time that his children were not yet teenagers. There was no office or a need for an office. His sons have not communicated to him the need for more space. Moreover, financial security has been an issue and losing income from the basement unit is confusing and contradictory.
14. Based on the foregoing, I am satisfied that the Landlord in good faith requires possession of the rental unit for residential occupation and she genuinely intends to reside in the rental unit for a period of at least one year. I am satisfied that the rental unit will be used as sleeping space for her eldest son. The Tenant did not adduce sufficient evidence to satisfy me that the Landlord's eldest son is not currently sleeping on a couch in the family room.
15. I am also satisfied that the rental unit will be used and accessed by the Landlord. This is supported by the undisputed evidence that the Landlord advised the Tenant of her need to store items in their unit a few times since 2022 and that many items are currently stored there. Pursuant to TSL-62768-15-RV2², upheld by the Divisional Court, *Sertic v. Mergarten*,³ using the basement rental unit for storage of items and recreational use has been found to be residential occupation.
16. In my view, "residential occupation" applies to situations where the rental unit will be incorporated into the landlord's main living quarters. If a landlord is living in a house in which the basement is rented out, I am satisfied they are entitled to reclaim use of the entire house by seeking possession of the rental unit for storage or an additional sleeping area. Where the intended purpose of the rental unit is to become incorporated into the landlord's main living quarters there is no change of use; it is still residential occupation. As stated in TSL62768-15-RV2,

"Residential occupation" cannot reasonably be restricted to only include that portion of a house used for activities such as sleeping, cooking or entertaining. To suggest otherwise would mean that a landlord would have to effectively abandon the remainder of the house and live solely in the basement in order to establish an intention to use a basement for residential occupation.

17. While the Tenant's witness submits that the loss of a tenant does not make sense financially, I do not find that this is sufficient to rebut the Landlord's good faith intent. The witness' evaluation of the Landlord's finances does not mean the Landlord will not occupy the rental unit. In addition, while the witness states that they do not believe there is a need for more space, I note that this witness no longer resides with the Landlord and when he was residing there, the children were not yet teenagers. I am not satisfied that the witness' assessment of space in the house is current.

Relief from eviction

18. 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 December 31, 2023 pursuant to subsection 83(1)(b) of the Act.

² 2015 CanLII 100191 (ON LTB) ³ 2017 ONSC 263

19. The Tenant submitted that the rental market is tough, and they have applied for various rental units and have not received a response. They reside in the rental unit alone, do not have family in the area and their work is within walking distance to the rental unit. When asked what steps the Tenant had taken to find alternative house, they stated that they did not have an opportunity to do so as the hearing was expedited. I also considered that the Tenant has a reduced amount of space due to the Landlord's storage of items in her unit.
20. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy. The extended termination date will give the Tenant some time to organize her move.

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 December 31, 2023.
2. If the unit is not vacated on or before December 31, 2023, then starting January 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 January 1, 2024.

November 2, 2023
Date Issued

Camille Tancioco
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 July 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.