



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

Citation: Mann v Singhera, 2023 ONLTB 70382

Date: 2023-10-23

File Number: LTB-L-028132-23

In the matter of: Main floor, 36 Sledman Street
Mississauga ON L4T1K5

Between: Kuldeep Kaur Mann Landlord

And

Major Singhera Tenant

Kuldeep Kaur Mann (the 'Landlord') applied for an order to terminate the tenancy and evict Major Singhera (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 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, the tenancy is terminated as of December 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On January 11, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2023. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by March 31, 2023.
5. 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

6. The only remaining issue to be determined is whether the Landlord requires the unit in good faith.

7. The rental unit is located on the main floor of a house. There are three bedrooms, one bathroom, a kitchen and living room.
8. 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.
9. The Landlord testified that she is presently residing with her husband and because she is separating from him, she requires her own space. She testified that she will be living in the rental unit with her mother. Her mother is currently living with her brother in a basement apartment. The conditions in her brother's unit are cramped and both her mother and brother are depressed. The Landlord testified that she would reside in the rental unit full-time and permanently.
10. The Tenant disputed the Landlord's good faith intent. He testified that the Landlord's husband advised him that he could rent the Tenant's unit for more money. The Tenant submits that the Landlord's husband said this in November 2022, January and February 2023 in person. As a result, the Tenant states that he gave the Landlord \$300.00 more a month. The Tenant states that he is also suspect of the Landlord's testimony that she intends to reside in the rental unit with her mother as there are rats and black mould. He testified that the city came to do an inspection and confirmed that there was mould in the back room. As a result, the conditions of the unit would not be good for the Landlord's mother's health.
11. The Landlord replied that she is working with the city to repair the back room but there are no immediate outstanding issues.
12. Once a tenant disputes a landlord's good faith intent, the tenant has an evidentiary burden to prove that the person purporting that they will reside in the rental unit does not genuinely intend to reside there. Although the legal burden rests with the Landlord to prove their application, I do not find that the Tenant adduced enough evidence to counter or overcome the Landlord's evidence.
13. The Tenant produced no supporting evidence to establish that the Landlord's husband told him that he could re-rent the Tenant's unit for more money. For example, the Landlord's husband was not summonsed as witness to testify to this conversation and the Tenant did not produce bank records showing that he had paid the Landlord an additional \$300.00 a month based on these conversations.
14. Even if I was satisfied that the conversations took place, which I do not, the fact that the Landlord's husband discussed how much they could rent the unit for is not determinative of the Landlord's intent not to reside in the rental unit. I am also not satisfied that because there are allegedly maintenance issues, the Landlord will not reside in the rental unit.
15. Based on the Landlord's believable and credible testimony about her current marital situation and mother's living condition, I am satisfied on the balance of probabilities, that the Landlord

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.)

in good faith requires possession of the rental unit for the purpose of residential occupation and she genuinely intends to reside in the rental unit and for a period of one year.

Mandatory Relief

16. The Tenant testified that in addition to black mould and rats, the back deck is warped, and the kitchen sink was rotted out. The black mould is in the back room and the city confirmed it was mould. However, the city did not confirm whether it was black mould.
17. Subsection 83(3)(a) of the *Residential Tenancies Act, 2006* (the 'Act') provides in part that the Board shall refuse an application for eviction where it is satisfied that the Landlord is in serious breach of their responsibilities under the Act.
18. In order to engage the mandatory refusal of eviction under subsection 83(3)(a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. Even if the allegations made by the Tenant are true, I am not satisfied that they constitute serious and continuing breaches of the Act. There is no evidence that the mould in the back room is black mould or so serious that the Tenant is experiencing health issues as a result. The other maintenance issues described, although arguably breaches of the Act, also do not rise to the level of "serious" breaches so as to trigger mandatory refusal of eviction.
19. I find subsection 83(3)(a) is not engaged because if the Legislature had intended for every breach of the Act to mandatorily disentitle a landlord from evicting a tenant, the word "serious" would not have been used. In other words, to result in mandatory relief from eviction the breach complained of must be sufficiently egregious that refusal of a landlord's basic right to access the eviction process under the Act is a reasonable result. In my view, the breaches complained of here does not rise to that level. These maintenance issues can be properly dealt with in the Tenant's own application.

Relief from Eviction

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 December 31, 2023 pursuant to subsection 83(1)(b) of the Act.
21. The Tenant testified that he has a myriad of health issues. As a result of these health issues, it is difficult to go look at rental units. However, I also considered the Landlord, Landlord's mother and brother's present living conditions. The Landlord testified that her husband may allow her to reside in the unit longer than November 1, 2023 but she is concerned about her mother and brother. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy to December 31, 2023. This will provide the Tenant with some time to organize his move. A longer postponement will not be granted in consideration of the Landlord's circumstances.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, as of December 31, 2023. 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.

October 23, 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 June 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.