



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

Citation: Catalano v Harvey, 2023 ONLTB 68625

Date: 2023-10-12

File Number: LTB-L-055927-22

In the matter of: Main Floor, 255 BELLAMY RD N
SCARBOROUGH ON M1J2M1

Between: Natale Catalano Landlord

And

Beverly Harvey Tenants
Gordon Jilks

2023 ONLTB 68625 (CanLII)

Natale Catalano (the 'Landlord') applied for an order to terminate the tenancy and evict Beverly Harvey and Gordon Jilks (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 Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on April 3, 2023. The Landlord and the Tenants 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 November 30, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice of Termination -Landlord's Own Use

3. On June 30, 2022, the Landlord gave the Tenants an N12 notice of termination deemed served on that date by personal service on the Tenant G. Jilks with the termination date of August 31, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation by his son.

The Landlord's evidence

4. The Landlord testified that his son has had the intent to move into the unit for some time. He notified the Tenants of the intention for his son to move into the unit at least two years ago.

He filed previous applications for his son to occupy the unit, however his previous applications were defective and therefore dismissed. He testified that his son is a doctor at a nearby hospital intends to occupy the unit so that he can be close to work. He testified that minor renovations are likely to be conducted while his son is living in the unit.

Evidence of the Landlord's witness

5. The Landlord's witness, CC is the intended occupant of the unit. He attested to the content of his declaration and his intention to occupy the unit for at least 1 year. He is a senior physician at a nearby hospital and seeks to have a closer commute to work. He is currently staying with his parents, awaiting occupancy of the unit and attested that he will occupy the unit as soon as it is available. He expects to live at the unit for at least 2 years, but not less than one year.

The Tenants' evidence

6. The Tenant GJ testified that he does not believe that the Landlord's son could live through renovations at the unit and therefore, the application should be dismissed. He did not challenge the good faith of CC's intention to move into the unit based on the notice before the Board. He requested 6 months to find alternate housing, if the Landlord's application is granted.

Good Faith

7. I am satisfied on a balance of probabilities that the intended occupant, CC intends to move into the unit for a period of at least one year. Both the Landlord and his son testified to CC's bona fide intent to occupy the unit and I found this evidence to be credible. CC has been staying at his parents in anticipation of moving into the unit when it is available. I am satisfied that CC's intentions are bona fide.
8. The Landlord has compensated the Tenants an amount equal to one month's rent by August 31, 2022.

Daily compensation, NSF charges, rent deposit

9. The Tenants were required to pay the Landlord \$12,546.58 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to April 3, 2023.
10. Based on the Monthly rent, the daily compensation is \$58.36. This amount is calculated as follows: \$1,775.00 x 12, divided by 365 days.
11. The Landlord collected a rent deposit of \$1,775.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.36 is owing to the Tenants for the period from April 1, 2023 to April 3, 2023.
12. 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

13. The Tenants have lived at the rental complex for 15 years, originally in the basement unit from 2008 to 2018. They then they moved to the main floor unit in 2018. GJ operates a small engines hobby business from the garage at the unit. His wife works in long term care near the rental unit. They do not drive, and are therefore reliant on public transit. They have a reasonable income, but they seek time to look for suitable and affordable housing as they have had challenges finding anything they can afford nearby. They have roots in the community and prefer to stay in the area.
14. The Landlord seeks for the earliest termination possible because of the delays in having this matter heard. His son has been waiting to move into the unit for more than 2 years.
15. The intended occupant is currently staying with his parents and therefore, I find that there is less prejudice to the Landlord and his son by delaying the termination of the tenancy.
16. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before November 30, 2023.
2. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, 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 December 1, 2023.
4. The Tenants shall pay to the Landlord \$12,546.58, which represents compensation for the use of the unit from September 1, 2022 to April 3, 2023.
5. The Tenants shall also pay the Landlord compensation of \$58.36 per day for the use of the unit starting April 4, 2023 until the date the Tenants move out of the unit.
6. The Landlord owes \$1,775.36 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 Landlord is \$10,771.22.
8. The Landlord shall deduct any rent payments made by the Tenants after the termination date from the amount owing.
9. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.

October 12, 2023
Date Issued

Donna Adams
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 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.

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