



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

Citation: Zwirchowsky v Hoekstra, 2023 ONLTB 67941

Date: 2023-10-12

File Number: LTB-L-017217-23

In the matter of: Apt 1, 122 SUNNYSIDE AVE
TORONTO ON M6R2P2

Between: Halyna Zwirchowsky Landlord

And

David Hoekstra Tenant

Halyna Zwirchowsky (the 'Landlord') applied for an order to terminate the tenancy and evict David Hoekstra (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 September 5, 2023. The Landlord attended the hearing and was represented by Cathy Corsetti. The Tenant attended the hearing and was represented by Samuel Mason and Kurt MacLellan. Alexandra Baczynskyj appeared as witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The application is based on an N12 Notice of Termination served on the Tenant on February 23, 2023, with a termination date of April 30, 2023. The N12 indicates that the Landlord's child requires the rental unit.
3. The Landlord has filed an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a minimum of 1 year.
4. The Landlord has paid to the Tenant compensation equal to one months rent.
5. The rental unit is a single detached dwelling consisting of two rental units.

Good faith:

6. The N12 was served pursuant to Section 48(1) of the *Residential Tenancies Act, 2006*, (the Act) which states in part:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

(c) a child or parent of the landlord or the landlord's spouse

7. In *Feeney v. Noble, 1994 CanLII 10538 (ON SC)*, the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac 2001 CanLII 40231 (ON SCDC)*, where the Court held that the "good faith" requirement simply means that a sincere intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
8. In the more recent case of *Fava v. Harrison, [2014] O.J No. 2678 ONSC 3352* (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."

Landlord's evidence:

9. The Landlord's daughter Alexandra Baczynskyj provided oral testimony at the hearing. Ms. Baczynskyj testified that she is currently residing with her parents and requires the rental unit for her own use. Ms. Baczynskyj recently moved back to Canada in 2022, was accepted to a two-year program at the Toronto Metropolitan University in March 2023 and intends to reside in the rental unit during her university program.
10. The Landlord also provided oral testimony at the hearing. The Landlord stated that her daughters intention was to move into the rental unit in the summer of 2022 prior to her daughter receiving official confirmation that she was accepted in her university program and agreed that a prior N12 notice was served on August 4, 2022 and that the L2 application for that notice was withdrawn as the Landlord did not pay the required compensation by the termination date set out in the notice.
11. On cross examination the Landlord also agreed that at the time of serving the first N12 notice, that the other unit in the home (Apt 2) was vacant. The Landlord did however state that during this period, the other unit was under construction and that a new tenant had already agreed to move into the vacant unit effective October 2022.

Tenant's evidence:

12. The Tenant has resided in the rental unit for approximately 8 years and has been a resident of the Parkdale community for over 30 years. The Tenant is 59 years old and resides in the unit alone.
13. The Tenant did not dispute the good-faith intentions of the Landlord's daughter, but testified that if evicted, it would be difficult to find a new rental unit in the area given the increase in market rent. The Tenant is self-employed and rents a commercial unit in the area for his business.

Analysis:

14. Based on the evidence before the Board, I find that the Landlord has established on a balance of probabilities that the Landlord's child genuinely intends to move into the rental unit and live there for at least one year. Therefore, the Landlord in good faith requires possession of the rental unit for a period of at least one year.
15. The Landlord and their child provided credible testimony at the hearing and there was insufficient evidence before the Board to suggest that the Landlord's application was made in bad faith.
16. Although the Landlord agreed to having another rental unit available in 2022, the Landlord provided a reasonable explanation as to why her daughter could not occupy that unit over the one subject to this application.

Relief from eviction:

17. 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.
18. Although the Landlord's application is granted, I find that it would not be unfair to delay termination of tenancy to November 30, 2023 to allow the Tenant some additional time to secure alternate housing.
19. The evidence before the Board is clear that the Landlord's daughter currently has adequate housing and that the Tenant has resided in the unit long-term. There was no evidence before the Board to support any prejudice against the Landlord or their daughter in granting the Tenant some additional time to vacate.
20. This Order contains all the reasons for this matter. No further reasons will issue.

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 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.

October 12, 2023
Date Issued

Fabio Quattrociochi
 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.

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