



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

Citation: Thakur v Tompkins, 2023 ONLTB 64956

Date: 2023-10-10

File Number: LTB-L-016992-23

In the matter of: 1204, 350 FRONT ST
BELLEVILLE ON K8N5M5

Between: Megha Thakur Landlord

And

Allen Tompkins Tenant

Megha Thakur (the 'Landlord') applied for an order to terminate the tenancy and evict Allen Tompkins (the 'Tenant') because the Landlord claimed that in good she 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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on June 28, 2023. The Landlord attended with her legal representative, L. McCullough. As of 9:47am, the Tenant was not present or represented at the hearing although properly served with notice of the hearing by the Board. There was nothing in the Board file indicating the Tenant had requested to reschedule or adjourn the matter prior to the hearing. As a result, as per section 7 of the *Statutory Powers Procedure Act*, the hearing proceeded with only the Landlord's evidence.

Determinations:

The N12/L2 Application

1. For the reasons below, I find that the Landlord in good faith requires the possession of the rental unit for the purpose of residential occupation for a period of at least one year. Therefore, the tenancy is terminated effective October 20, 2023 (standard 11 days from the issuance date of this order).
2. I am satisfied from reviewing the *Certificate of Service* and hearing the submissions of the Landlord's legal representative, that on February 21, 2023 the Landlord's legal representative served the tenant (by handing the document to him) with an N12 Notice of Termination indicating that the Landlord required the rental unit for "reason 1" for "me".
3. The termination date in the N12 was May 17, 2023 which provided the Tenant with more than 60 days notice and fell at the end of the rental term.
4. The Landlord satisfied the one-month compensation requirement by sending the Tenant an electronic money transfer in the amount of \$1950.00 on April 09, 2023. A copy of the electronic money transfer confirming that the deposit was successful was submitted into the Board file.

5. The Landlord collected a rent deposit of \$1950.00 from the Tenant on May 18, 2022 and the deposit is still being held by the Landlord. Interest has never been paid on the deposit.
6. 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.
7. The current monthly rent is \$1,950.00 and this is a month-to-month tenancy.
8. The Tenant was in possession of the rental unit when the L2 application was filed, was in possession as of the hearing date.

Good Faith

9. The only issue to determine is the good faith requirement. The N12 was served pursuant to section 48 of the *Residential Tenancies Act* (the 'Act'). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish at the time of the service of the N12 Notice, she required, in good faith, the unit for residential use for a period of at least one year.
10. In *Feeney v. Noble*, 1995 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 the Landlord sincerely 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. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the rental unit are largely irrelevant and the only issue is whether the landlord has a genuine intent to reside in the property. However, the Court also stated the Board 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.
11. The Landlord submitted a declaration with this application, that she in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year. The Landlord currently lives in a rental unit. The Landlord testified that she is currently facing financial struggles as she has to pay rent and also the mortgage on the subject property. The Landlord testified that she intends to live in the rental longer than one year.
12. Based on the uncontested evidence of the Landlord, I accept that she intends, in good faith, to live in the rental unit for at least one year.

Relief from Eviction Analysis

13. Since the Tenant did not attend the hearing, I did not hear any evidence about circumstances relevant to section 83. The Landlord advised that the Tenant is gainfully employed, single and he has no children. The Landlord was not aware of any circumstances regarding why I should delay or deny eviction.

14. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. The Landlord is seeking a standard eviction order. The Tenant was served with the N12 Notice and the Notice of Hearing, which both warned of a possible eviction. In the circumstances I am satisfied that a standard order is appropriate.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated, effective October 20, 2023 (standard 11 days from the issuance date of this order).
2. If the unit is not vacated on or before October 20, 2023, then starting October 21, 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 October 21, 2023.
4. The Tenant shall pay to the Landlord \$2,692.60, which represents compensation for the use of the unit from May 18, 2023 to June 28, 2023 less any amounts already paid.
5. The Tenant shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting June 29, 2023 until the date the Tenant moves out of the unit.
6. The Landlord owes \$2,004.36 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
7. If the Tenant does not pay the Landlord the full amount owing on or before October 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 21, 2023 at 6.00% annually on the balance outstanding.
8. The Landlord or Tenant shall pay to the other any sum of money that is owed as a result of this order.

October 10, 2023

Date Issued

Ajay Grewal

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 April 10, 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.