



Order under Section 69
Residential Tenancies Act, 2006

Citation: Skjodt v Osman, 2023 ONLTB 64693

Date: 2023-09-28

File Number: LTB-
L-014437-22

2023 ONLTB 64693 (CanLII)

In the matter of: Unit 1, 393 BERKELEY ST TORONTO
ON M5A2X8

Between: Dan Skjodt Landlord

And

Zac Osman Tenant

Dan Skjodt (the 'Landlord') applied for an order to terminate the tenancy and evict Zac Osman (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.

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 August 22, 2023.

The Landlord and the Landlord's Legal Representatives, C. Salgado and D. Levitt and the Tenant and the Tenant's Legal Representative, E. Page attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy terminates on November 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On March 11, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022.

Landlord's Evidence

5. The Landlord testified that he purchased the property in November 2021. He testified that it is his intention to renovate the complex and live there with his wife.
6. The complex is comprised of 3 residential units that he plans to renovate to suit his needs. The other 2 units in the complex are also subject to an application before the Board based on an N12 notice of termination. He plans to make the unit accessible by installing an elevator and appropriate ramps.
7. The Landlord testified that he is currently living in a row house. He testified that the home is 4 stories and is difficult to navigate due to his medical conditions, including osteoarthritis, knee replacements, hip replacement, and back issues. The home also has no parking, and he usually cannot find parking near the house. He testified that his current home cannot be retrofitted to meet his accessibility needs.
8. The Landlord testified that he and his wife always planned to move back to the neighbourhood where the rental complex is located as that is where they started their life together. His plan is to renovate the complex to be able to "age in place" and stay there for the rest of their lives.
9. The Landlord submitted the renovation plans for the complex into evidence.
10. On cross examination, the Landlord testified that he does not have any permits yet as he is unsure of when the unit will be vacant and there is no point in applying until that issue is resolved. He testified that he has contractors lined up and hopes to start the renovations once the Tenants vacate the unit. He testified that he anticipates that the renovations will start immediately and could take up to 10 months to complete.

Tenant's Evidence

11. The Tenant did not specifically contest the Landlord's intention to reside in the unit. They argue that the proper notice of termination in this case is an N13 Notice of termination, not an N12.
12. The Tenant's legal representative submits that it is impossible for a landlord to reside in 3 separate units and what the Landlord is actually doing is converting the complex into a single-family home. She submits that the plans submitted by the Landlord show that 2 of the units in the complex will no longer exist as they do now, and the footprint will be significantly different.
13. The Tenant's legal representative relies on *Two Clarendon Apartments Limited v. Sinclair*, 2019 ONSC 3845. She submits that this case codifies the difference between a demolition and a renovation, and in this case, all of the units are being demolished so that the complex can be converted to a single-family home.

14. The Landlord's legal representative submits that the case relied on by the Tenant's legal representative should not be considered as that case specifically deals with renovation versus demolition when an N13 has been given. It talks about the difference between the two and if demolition is actually a renovation, then the Tenant would have the right of first refusal.
15. The Landlord's legal representative submits that the Board must look at the primary motivation for serving a particular notice. The Landlord's Legal Representative relies on Board order TST-88319-17 where the Board looked at the primary purpose behind the notice of termination, whether it was N12 own use or N13 for extensive renovations.
16. The representative also relies on Board Order TSL-62768-15, specifically paragraph 5, which says:

The Landlord's primary motivation in serving the N12 was not to evict the Tenant for the Landlord's own use but to comply with the zoning by-law that provides that the rental unit is not habitable. Therefore, instead of proceeding with the N12, the Landlord should have proceeded with an N13 notice of termination indicating the Landlord intended to convert the unit into a non-residential use, a notice that also carries with it a longer notice period.
17. The Landlord's legal representative submits that the Board must assess the Landlord's primary motivation for serving the N12 notice of termination. In this circumstance, he argues that the intention of the Landlord is residential occupation and that the renovations are secondary to that.

Analysis

Should the application be dismissed?

18. After considering the submissions made with respect to dismissing the Landlord's application based on the Tenants being served with the wrong notice of termination, I do not accept the Tenant's position.
19. I agree with the Landlord's legal representative's position that the Board must first consider the primary motivation behind the N12 notice of termination. I do not find the caselaw relied upon by the Tenant's representative helpful in making that determination because it specifically deals with the difference between demolition and renovation once an N13 notice is given.
20. Based on the evidence before me, I find that the Landlord's primary motivation for giving the Tenant's the N12 notice of termination is for residential occupation. The complex will undergo renovations, but the purpose of the renovations is to facilitate an accessible space that meets the Landlord's medical needs so that they can live out the rest of their lives there.

Good Faith

21. The N12 Notice was served pursuant to section 48(1)(a) of the Residential Tenancies Act, 2006 ("Act") which states:

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,

(a) the landlord

22. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:
- “the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...”
23. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are “largely irrelevant”.
24. Based on the evidence before me, I find on a balance of probabilities, that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year. I found the Landlord's testimony regarding his intention to occupy the unit to be genuine and consistent, and therefore credible.

Relief from eviction

25. The Tenant has lived in the unit since 2014. He testified that if he has to vacate the rental unit, he will have to move out of the city because of affordability issues.
26. The Tenant testified that he has looked at other units but has not applied to any other units, citing affordability as the main factor. He requested 3 or 4 months to vacate the unit.
27. The Landlord submits that the Tenant has known of the Landlord's intention to move into the unit since at least March of 2022. The Landlord submits that the Tenant has already had approximately 18 months to find alternate accommodations and any further delay would be prejudicial to the Landlord.
28. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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. While I am mindful of the Landlord's submissions regarding potential prejudice they may face if termination is further delayed, I find that prejudice faced by the Tenant is greater. He has lived in the unit since 2014. It is no secret that today's rental housing market is extremely competitive. Although the Tenant has known about the Landlord's intentions since being served the notice of termination, the outcome was still to be decided. I find that delaying the termination to November 30, 2023 is fair in all the circumstances.

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.

Date Issued

September 28, 2023

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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.