



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

Citation: 2735856 Ontario Ltd. v Jack, 2023 ONLTB 64588

Date: 2023-09-25

File Number: LTB-L-079258-22

In the matter of: Unit 101, 1897 AVENUE RD
NORTH YORK ON M5M3Z9

Between: 2735856 Ontario Ltd. Landlord

And

Marcia Jack Tenant
Comella Burke

2735856 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Marcia Jack and Comella Burke (the 'Tenant') because the Landlord requires possession of the rental unit in order to convert the unit to a non-residential use.

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 May 29, 2023.

The Landlord, Landlord's legal representative Victoria Marr(VM), the Tenant, and the Tenant's daughter Comella Burke attended the hearing.

Determinations:

1. On December 08, 2022, the Landlord served the Tenant with a notice to terminate the tenancy on April 30, 2023 by Form N13 pursuant to s. 50(1)(b) of the Residential Tenancies Act, 2006 (the 'Act'). The notice says the Landlord intends to convert the rental unit into a non-residential space by converting it into office space.

Compensation:

2. The residential complex contains fewer than five residential units. Therefore, the Landlord is required to compensate the Tenant in an amount equal to one month rent by the termination date or offer the Tenant another rental unit acceptable to the Tenant.
3. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under section 48(1)".

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4. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the Tenant no later than the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is April 30, 2023.
5. On April 29, 2023, the Landlord sent an email transfer of \$1,330.00 compensation to the Tenant, equal to one month's rent. In response to the Tenant's email on April 29, 2023, at 7:31 a.m. enquiring about the purpose of the compensation, VM's email on April 29, 2023, at 8:36 a.m., explained the purpose of the compensation as pertaining to the N13 notice.
6. However, the Tenant returned the compensation to the Landlord on May 03, 2023. The Tenant conceded that she rejected the compensation because the Landlord sent the money to her daughter, Comella Burke, who no longer resides at the rental unit. The Tenant asserts that she received no enquiries from the Landlord concerning the compensation afterwards.
7. I am satisfied based on the evidence that the Landlord paid the Tenant compensation equal to one month's rent on April 29, 2023, via email transfer, and thus satisfied sections 84.1 and 55.1 of the Act. Thus, the fact that the Tenant chose to return the compensation to the Landlord on May 03, 2023, cannot reasonably result in a finding that the Landlord failed to provide the payment. However, as the payment was not resent after the Tenant rejected it, I will order that it be paid by the Landlord to the Tenant accordingly.

N13 Notice of Termination

8. The Landlord claims she requires the rental unit to be vacated because she, in good faith, intends to convert it to a non-residential use.

Landlord's Evidence

9. The Landlord testified that she wants to change the use of the rental unit from residential to commercial because they require the space for an office and storage. She testified that when she purchased the rental unit in May 2020, the first floor of the building was already used as commercial property, and the second level was used as a residential unit. The Landlord testified that the conversion requires no permits or authorization from the city because the work is not extensive. The Landlord explained that the work will consist of wall partitioning, painting, creating workstations and tables, and some minor electrical work.

Tenant's Evidence

10. The Tenant did not dispute that the Landlord, in good faith, intends to convert it to a non-residential use but submitted that she has been on disability due to injuries sustained while working as a Personal Support Worker (PSW) and is on modified work as a receptionist at the VHA Home Healthcare. The Tenant explained that it would be challenging for her to find an apartment away from work that is easily accessible for transportation. Moving out would make her life even more difficult because rent costs are expensive.

Analysis

11. Based on the evidence and testimonies before me, I am satisfied that the Landlord requires the Tenant to vacate the rental unit to convert it to a non-residential purpose. The Landlord wishes to use the rental unit for commercial purposes, particularly for office space and storage for her business. The unit is zoned for commercial use. While the Landlord intends to change the rental unit, there was no evidence that this work requires permits or other authority.
12. I find that the Landlord, in good faith, intends to convert the rental unit to a commercial purpose, office space, such that she satisfies the requirement of paragraph 50(1)(b) and section 73 of the Residential Tenancies Act, 2006 (the 'Act').
13. 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.
14. While I am sympathetic concerning the Tenant's circumstances, particularly with respect to medical condition, I do not believe, based on the evidence, that the Tenant's medical condition is such that fairness would dictate that I deny eviction. Instead, I find it appropriate to provide the Tenant with additional time to vacate the rental unit as she will need additional time and assistance to pack her belongings and move.

It is ordered that:

1. The Landlord shall pay the Tenant \$1,330.00 compensation on or before October 19, 2023
2. If the Landlord complies with paragraph one above, 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.
3. 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.
4. The Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting December 1, 2023 until the date the Tenant moves out of the unit.
5. 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.

September 25, 2023**Date Issued**_____
Percy Laryea

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.