



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

Citation: Nguyen v Khan, 2023 ONLTB 59881

Date: 2023-09-21

File Number: LTB-L-060078-22

In the matter of: 15 ALBERNI ST
NEPEAN ON K2J1V8

Between: Lilly Nguyen Landlord
Tri Pham

And

Mostafizur Khan Tenant
Rokshana Montaj

Lilly Nguyen and Tri Pham (the 'Landlord') applied for an order to terminate the tenancy and evict Mostafizur Khan and Rokshana Montaj (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.

This application was heard by videoconference on April 18, 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 between the Landlord and the Tenants is terminated and the Tenants must vacate the rental unit on or before October 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. **N12 Notice of Termination**

Landlord's Own Use

On October 13, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of December 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's parent.

4. The Landlord has compensated the Tenant an amount equal to one month's rent by December 31, 2022.

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5. The Landlord testified that he requires the rental unit for his parent. His Mother is retired and she has become ill with a heart condition and he requires the rental unit to help care for her.
6. The Tenant refused to vacate the rental unit by the termination date on the N12 notice. The Tenant did not provide evidence that the Landlord did not intend to occupy the rental unit, rather the Tenant testified that he could not move from the rental unit due to his health condition and was unable to find another place to live.
7. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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.
8. I find the Landlord in good faith requires possession of the rental unit for the purpose of their parent's residential occupation for a period of at least one year.
9. The Landlord collected a rent deposit of \$1,700.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$55.36 is owing to the Tenant for the period from January 23, 2020.
10. 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.
11. **Relief from eviction**
12. The Landlord requested that the Board order an immediate eviction as the Tenant has not made any attempt to secure a new rental unit and that he would like his Mother to occupy the rental unit as soon as possible. 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 October 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant testified and provided evidence that he has health conditions for which he is receiving treatment. Postponing the eviction will allow the Tenant additional time to find a rental unit and to help manage his medical needs.

It is ordered that:

1. The Tenancy between the Landlord and the Tenant is terminated. The Tenants must move out of the rental unit on or before October 31, 2023.
2. The Landlord owes \$1,755.36 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.
3. The total amount the Tenant owes the Landlord is \$4,336.16.
4. If the Tenant does not pay the Landlord the full amount owing on or before September 18, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 19, 2023 at 6.00% annually on the balance outstanding.

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5. If the unit is not vacated on or before October 31, 2023, then starting November 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after November 1, 2023.

September 21, 2023**Date Issued**

 Maria Shaw

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 March 19, 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.

