



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

Citation: Li v Shiu, 2023 ONLTB 62523

Date: 2023-09-19

File Number: LTB-L-021264-23

In the matter of: BASEMENT LEVEL 2, ROOM 2, (UNIT 2), 131 CHARLTON
BLVD
NORTH YORK ON M2R2J2

Between: Wen Hui Li Landlords
Xin Yi Liu
Fang Zhou Liu

And

Paul Shiu Tenant

Wen Hui Li, Xin Yi Liu and Fang Zhou Liu (the 'Landlords') applied for an order to terminate the tenancy and evict Paul Shiu (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 Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on September 6, 2023.

The Landlord's Legal Representative, Julie Jing Zhu and the Landlords, Wen Hui Li and Xin Yi Lui attended the hearing.

As of 12:47 pm, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated effective September 30, 2023.

2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination- Landlords Own Use

3. On March 1, 2023, the Landlords gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation for the purpose of their own use.
4. The Landlord, Xin Yi Liu provided a sworn declaration that states in good faith he requires possession of the rental unit for the purpose of his own residential occupation for a period of at least one year.
5. The Landlords have compensated the Tenant an amount equal to one month's rent by April 30, 2023. The Landlord, Xin Yi Liu, testified that the compensation cheque was served to the Tenant on March 1, 2023 with the N12 notice of termination. The Landlords provided a copy of the compensation cheque dated March 1, 2023, paid to the order of Paul Shiu.

Daily Compensation

6. The Tenant was required to pay the Landlords \$2,120.55 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to September 6, 2023.
7. Based on the Monthly rent, the daily compensation is \$16.44. This amount is calculated as follows: \$500.00 x 12, divided by 365 days.
8. The Tenant is not in arrears of rent and the rent is paid up to September 30, 2023.
9. The Landlords collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlords.
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.

Good Faith

11. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (Act). Section 48(1) requires that, in order to be successful in this application, the Landlords must establish that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.

12. 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 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."
13. 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 Uncontested Evidence

14. The Landlord, Xin Yi Liu testified that the basement in which the rental unit is located consists of three rooms, each rented to different tenants.
15. The Landlord testified that his family situation has changed, and he has divorced from his wife and was required to move out of his matrimonial home.
16. The Landlord testified that he and his wife signed an Agreement to Divide Assets for Divorce on June 10, 2022. The agreement states that Wen Hui Li (Landlord's wife) will remain at the family home located at 207 Drewry Avenue and that Xin Yui Lui and his son Fang Zhou Lui will move to another family property located at 131 Charlton Blvd, North York. The Landlords provided a signed copy of this agreement.
17. He testified that he is temporarily residing at his commercial property, which has no residential space. This space does not have a bedroom and he has placed a mattress in the commercial space. He states this building is not meant for residential occupation.
18. He testified that he tried to mediate with the Tenant prior to the hearing, however, the Tenant refused to move out unless the Landlords provided him with a sum of \$20,000.00, which the Landlords could not afford.

Analysis

19. I am persuaded by the Landlord, Xin Yi Liu's uncontested testimony that he genuinely intends to move into the rental unit for a minimum of one year and that he currently resides at his commercial property with no residential space. I am also persuaded by the testimony and evidence that he has become divorced from his wife and that he is no longer able to reside in his matrimonial home. Accordingly, I am satisfied that the Landlords requires possession of the rental unit in good faith.

Relief from Eviction

20. 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. The Landlord was not aware of

any circumstances of the Tenant relevant to section 83. The Tenant was not present at the hearing to provide any evidence of such circumstances, and there is otherwise no evidence in the record before me that suggests eviction should be refused or delayed.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, the Landlords 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 Landlords on or after October 1, 2023.
4. The Tenant shall also pay the Landlords compensation of \$16.44 per day for the use of the unit starting September 7, 2023 until the date the Tenant moves out of the unit.

September 19, 2023

Date Issued

Trish Carson

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 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.