



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

**Citation:** Ambalavanar v Dakin, 2023 ONLTB 62520

**Date:** 2023-09-18

**File Number:** LTB-L-019511-23

**In the matter of:** Basement, 89 Quantrell Trail  
Scarborough ON M1B1L7

**Between:** Sivakumaran Ambalavanar

Landlord

**And**

Terry-Ann Casandra Dakin

Tenant

Sivakumaran Ambalavanar (the 'Landlord') applied for an order to terminate the tenancy and evict Terry-Ann Casandra Dakin (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.

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

The Landlord and a witness for the Landlord, Anush Sivakumana attended the hearing.

As of 10:45 am, 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 Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated effective September 29, 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 Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation for the purpose of his own residential occupation.
4. The Landlord 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 Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2023. The Landlord testified that the lawful monthly rent for March 2023, was waived by the Landlord as compensation. He testified that the Tenant was aware of this agreement and was sent a letter in this regard. The Tenant did not pay their lawful monthly rent for March 2023.
6. There is no last month's rent deposit.

Good Faith

7. 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 Landlord must establish that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.
8. 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."
9. 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

10. The Landlord testified that he currently resides in the upper unit of the residential complex and that his son, daughter in law and granddaughter have moved in with him.

11. He testified there is not enough space in the upper unit for all four of them to reside and that he requires his own living space.
12. He testified that his son, daughter in law and grandchild will continue to occupy the upper rental unit. He testified that they require more living space than him and the upper unit is larger for their needs, and he does not require as much space and can comfortably reside in the rental unit.
13. The Landlord's son, Anush Sivakumana, testified that he moved in with his father in April 2023, and that himself, his wife and his daughter currently reside in the upper rental unit with his father. He states that the upper rental unit is far too small for the four of them to reside in.
14. He testified that the upper unit consists of two bedrooms, plus a small den with no closet.
15. When his family moved in with his father, his father gave up his master bedroom to allow his son and wife to occupy that room and he relocated himself to a small bedroom.
16. He testified that he works from home and requires one of the rooms for an office. He also requires a bedroom for his daughter, which leaves no space for his father.

#### Analysis

17. I am persuaded by the Landlord's uncontested testimony that he genuinely intends to move into the rental unit for a minimum of one year and requires his own living space. I am also persuaded by the testimony of the Landlord's son that himself, his wife and his daughter currently live with his father in the upper rental unit and that it is too small for the four of them to reside. Accordingly, I am satisfied that the Landlord requires possession of the rental unit in good faith.

#### Relief from Eviction

18. 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 Landlord and the Tenant is terminated, as of September 29, 2023. The Tenant must move out of the rental unit on or before September 29, 2023.

2. If the unit is not vacated on or before September 29, 2023, then starting September 30, 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 September 30, 2023.

**September 18, 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 March 30, 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.