



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

Citation: Ghosh v Grant, 2023 ONLTB 62074

Date: 2023-09-13

File Number: LTB-L-000976-21

In the matter of: 20, 3985 EGLINTON AVE W
MISSISSAUGA ON L5M0E7

Between: Swapan K Ghosh Landlord

And

Wesley Grant Tenant

Swapan K Ghosh (the 'Landlord') applied for an order to terminate the tenancy and evict Wesley Grant (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 first heard January 13, 2023 and adjourned on consent after the proceeding had commenced.

This matter came back before the Board by videoconference on September 6, 2023.

Only the Landlord and his legal representative Suraj Sharma attended the hearing.

As of 9:05 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 and the claim for compensation in the application. Therefore, the tenancy shall be terminated as detailed below.
2. The Tenant was in possession of the rental unit on the date the application was filed. The Tenant still resides in the rental unit.
3. The rental unit is a 2-bedroom townhouse.

4. The tenancy began around June 1, 2014.

N12 Notice of Termination

5. On November 20, 2021, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2022. The Landlord claims that he requires vacant possession of the rental unit for his own personal use for residential occupation.
6. The Landlord submitted as evidence various communications and documents.
7. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
8. The Landlord has complied with s.48.1 and 55.1 of the Act by providing the Tenant with compensation equivalent to one months rent on or before the date of termination specified in the notice of termination. Compensation was paid by cheque, dated January 10, 2022 and the Tenant cashed the cheque.

The Landlord's Good Faith Intention:

9. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement set out in s.48(1) of the Act which provides:

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;

10. The onus is on the Landlord to establish that the Landlord in good faith require the rental unit for the purpose of residential occupation.
11. 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...

12. Thus, the Landlord must establish that they genuinely intend to use the rental unit as detailed in the N12 notice. The Court also held in *Salter* that the Landlord's motives are "largely irrelevant".

The Landlord's Evidence:

13. It was the uncontested testimony of the Landlord that he currently lives in a large 4 bedroom unit, he is around 73 years of age, he lost his wife a few years ago and now lives alone. The Landlord said that the bedroom and bathrooms in his current home are on the

second floor, with approximately 15 stairs and due to his medical conditions with respect to back pain, due to a workplace injury in the late 1990's, diabetes and heart issues, he needs to move into the rental unit as it is small and more manageable. The Landlord's evidence included two notes from his doctor dated October 28, 2021 and May 16, 2022 which support the Landlord's testimony.

14. The Landlord said the rental unit has bedroom, bathroom, kitchen and laundry all on the main level and as such, he would not have to use any stairs.
15. As part of the condo fee, all yard work and maintenance are covered whereas in his current home, it is an added expense.
16. The Landlord seeks termination of the tenancy and said he intends to live in the rental unit for at least one year and as long as his health will allow.

Law and Analysis:

17. The matter before me is whether the Landlord has established that he served the Tenant with the N12 notice in good faith, meaning he has a genuine intention to use the rental unit for residential occupation for at least one year.
18. The reasonableness of the Landlord's intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. In *McLean v. Mosher* (1992), 1992 CanLII 7625 (ON SC), 9 O.R. (3d) 156 (Ont. Gen. Div.) the Court stated that a landlord need not establish that his requirement is reasonable, only that he bona fide wanted and genuinely had the immediate intention to occupy.
19. I find therefore that the reasonableness of the Landlord's intention to move into the rental unit not relevant to the issues of intention or good faith.
20. Based on the evidence before the Board and on a balance of probabilities, I am satisfied the Landlord intends to reside in the residential unit/complex for no less than one year.

Daily Compensation and Rent Deposit

21. The Tenant was required to pay the Landlord \$24,926.65 in daily compensation for use and occupation of the rental unit for the period from February 1, 2022 to September 6, 2023.
22. Based on the Monthly rent, the daily compensation is \$42.76. This amount is calculated as follows: \$1,300.49 x 12, divided by 365 days.
23. The Landlord collected a rent deposit of \$1,200.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$171.08 is owing to the Tenant for the period from June 1, 2014 to September 6, 2023 .
24. 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.

Relief from eviction

25. 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.
26. The Tenant did not attend the hearing to testify or defend their position.
27. I have considered the length of the tenancy and the fact that no minor children reside in the rental unit. The Landlord had no further knowledge of the Tenant's circumstances or reasons to delay or deny the eviction.
28. I find it reasonable to allow a short delay of eviction for the Tenant to seek alternative housing arrangements.

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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.
4. The Tenant shall pay to the Landlord \$24,926.65 (less any monies already paid to the Landlord), which represents compensation for the use of the unit from February 1, 2022 to September 6, 2023.
5. The Tenant shall also pay the Landlord compensation of \$42.76 per day for the use of the unit starting September 7, 2023 until the date the Tenant moves out of the unit.
6. The Landlord owes \$1,200.00 which is the amount of the rent deposit and interest on the rent deposit in the amount of \$171.08, and this is to be deducted from the amount owing by the Tenant.
7. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

September 13, 2023
Date Issued

Dana Wren
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.

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