



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

Citation: Bunder v Eugene, 2023 ONLTB 61962

Date: 2023-09-12

File Number: LTB-L-000043-23

In the matter of: 216, 160 Wellington Street East
Aurora ON L4G1J5

Between: Elizabeth Bunder Landlord

And

Heather Eugene Tenant

Elizabeth Bunder (the 'Landlord') applied for an order to terminate the tenancy and evict Heather Eugene (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 June 14, 2023.

The Landlord's agent, Anita Elizabeth McCormick, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, an order shall issue terminating the tenancy September 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed and continued to be in possession as of the hearing date.
3. By way of background this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$937.82. The rental unit is a one-bedroom condominium unit in which the Tenant has resided for the past 20 years.

N12 Notice of Termination

4. On November 4, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2023 pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006*. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter AM (the agent who attended the hearing).
5. At the hearing, AM testified that she requires the rental unit to move into as she is currently residing in her mother's 3-bedroom home with her two adult brothers and has no separate

space or privacy for herself. As her mother is 92 years old, she requires greater care and support, which AM provides.

6. AM testified that prior to moving into her mother's home, she lived in St. Thomas and commuted regularly, which took up a significant amount of her time. As of the hearing date, her common-law daughter resides in the home in St. Thomas.
7. AM testified that the rental unit is only 4kms away from her mother's home which would allow her to be closer to her, compared to her St. Thomas home.
8. AM also testified that her daughter has been accepted in the dentistry program at U of T and the rental unit is also significantly closer to her school, compared to their home in St. Thomas. As of the hearing date, AM's daughter resides on a temporary basis with AM's sister-in-law.
9. AM confirmed that the compensation requirement was satisfied on January 31, 2023 when an e-transfer was sent to the Tenant in the amount of \$937.82.
10. AM seeks a termination of the tenancy by the end of June 2023.

Tenant's Evidence and Request for Relief

11. The Tenant disputes the Landlord's intention to move into the rental unit, stating that the Landlord is determined to evict her because she pays lower rent.
12. The Tenant testified that she has resided as the sole occupant of the rental unit for the past 20 years and has been a good tenant – she does not feel that the rental unit is large enough to accommodate both the Landlord's daughter and her daughter.
13. The Tenant does not feel it is fair for her, a 60-year-old, to be displaced by the Landlord, particularly given the length of her tenancy.
14. The Tenant testified that she has been looking for a rental unit but the rent is almost double what she is paying and therefore not affordable for her.
15. In the alternative, the Tenant seeks a delay in eviction to August 31, 2023 to secure another home.
16. AM opposes the delay requested by the Tenant; she also testified that the comment about the Tenant paying lower rent related to the care of the condition of the rental unit. AM also clarified that her daughter's first preference was a school in London, but as she did not get admission into the program, she accepted the program at U of T.

ANALYSIS

17. Subsection 48(1) of the Act states:

48 (1) 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;

(b) the landlord's spouse;

(c) a child or parent of the landlord or the landlord's spouse; or

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located.

[Emphasis added.]

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18. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC), this legal test remains unchanged under the successor legislation (see *Salter*, para. 25 and 26).
19. The subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC).
20. Although the Tenant alleges the Landlord's motive in serving the N12 Notice is to increase her rental income since her rent is less, I find there was insufficient evidence to support this assertion. Further, the AM's evidence contradicts this statement as she testified, she would be moving into the rental unit, thereby eliminating all rental income.
21. Based on the evidence before the Board, on a balance of probabilities, I find that the Landlord has demonstrated a genuine intent to use the rental unit for her daughter's own residential occupation for a period of at least one year. I say this because the Landlord's daughter has adequately explained her need for the rental unit given her current living arrangements as well as her family and financial circumstances.
22. With respect to the relief requested by the Tenants, as the time requested by the Tenant has passed, I find the Tenant has had sufficient time to find another home. Given the length of this tenancy, I find a further delay to September 30, 2023 to be appropriate.
23. There is no last month's rent deposit.
24. 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 September 23, 2023 pursuant to subsection 83(1)(b) of the Act.
25. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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.

September 12, 2023

Date Issued

Sonia Anwar-Ali

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.