



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

Citation: Nevin and nadeem Bhimani v Kathleen Macdonald, 2023 ONLTB 39863

Date: 2023-09-07

File Number: LTB-L-075687-22

In the matter of: 12348 ARBOUR ST
TECUMSEH ON N8N1P2

Between: Nevin and Nadeem Bhimani Landlord

And

Kathleen Macdonald Tenant

Nevin and nadeem Bhimani (the 'Landlord') applied for an order to terminate the tenancy and evict Kathleen Macdonald (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 heard by videoconference on May 2, 2023.

The Landlord Nevin Bhimani and the Landlord's Legal Representative Marc Hopper and the Tenant and the Tenant's Legal Representative Christopher Hall attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The lawful monthly rent is \$1,676.08.

N12 Notice of Termination - Landlord's Own Use

On December 8, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on December 8, 2022, with the termination date of February 28, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child/son Ariz Bhimani.

4. The Landlord has compensated the Tenant an amount equal to one month's rent by February 28, 2023. The Tenant presented no evidence to dispute compensation.
5. The rental property was described as a 4 bedroom, one of these bedrooms are small – 2 storeys with 1 ½ bathrooms, kitchen, and living room.
6. The Landlord Ms. Nevin Bhimani testified. Her son Ariz Bhimani is a graduate from the University of Windsor. She wishes her son to reside in the rental unit for one year or more.
7. Ms. Bhimani stated she was going to charge her son a favorable rent, but never stated what that amount would be.
8. Mr. Hall cross-examined Ms. Bhimani on the evidence presented. She stated the monthly rent is \$1,676.08 and she may charge her son \$1,000 but did not provide what amount she will be charging her son. It appeared she guessed on the amount she would be charging her son. She also indicated the property was purchased in October 2021.
9. The Landlord's next witness was the Landlord's son Ariz Bhimani. He completed his Bachelor of Science program at the University of Windsor. He still attends the University as part of the epee program.
10. Mr. Bhimani stated he wishes to move into the rental unit and intends to stay long term but will reside at the rental unit at least a year.
11. Mr. Hall crossed examined Mr. Bhimani on the evidence presented. It was discovered that Mr. Bhimani graduated in October 2022, he still attends the University as part of the epee program and has yet to find employment but has applied.
12. Mr. Bhimani admitted the residence he currently resides that he is paying \$1,000. He is uncertain what favourable rent means but is assuming it will be less than \$1,000.
13. The Tenant Ms. Kathleen MacDonald testified. She stated she has been living at the rental unit for 4 ½ years. Her two children ages 23 and 18 years old are living and they are attending school. She testified she has been looking for a new rental place and the market is limited in finding a 3-bedroom unit.
14. Ms. MacDonald testified at the rental property that the front property was vacate until December 2022 and she received the N12 notice , one week after it had been occupied. Further, she stated the back rental unit has had the same 3 people living there for the last 2 years.
15. Mr. Hopper cross examined the Tenant on the evidence presented. Ms. MacDonald admitted she had only been searching for a new rental unit about 6 weeks ago around February 2023.

16. I will note there was a question about a previous N12, however that had nothing to do with Ms. Bhimani, it was from the previous owner. This was the first N12 served to the Tenant by Ms. Bhimani.

Analysis

17. The main issue to be determined is whether the Landlord has established that they in good faith require possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the Act.
18. Section 48 has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the Landlords' intention, nor the fact that the Landlords may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.)).
19. Steele J. in the Divisional Court has stated "... the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal." See *Feeney v. Noble* (1994), [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762 (Div. Ct.) at 764.
20. While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal properly stops short of entering into an analysis of the landlord's various options:.....Once a landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s. 51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s. 51(1) standard.
21. In *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Court commented: We accept, as reflected in *Salter*, *supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith to occupy the property.
22. When I examine the evidence presented, I am not satisfied on a balance of probabilities of the Landlord's genuine intention of the rental unit. Both the Landlord and her son did not provide an amount of rent the son would be charged. I find it more likely than not, if the Landlord's genuine intention was to provide her son the rental unit, they would had already

have established the amount of rent which would be charged once the Landlord regained possession of the rental unit. They were both uncertain what the amount would be. It seems there was a lack of planning between the Landlord and her son. I expected more evidence within the family, the Landlord and son were wishy washy about their plans.

23. Further, Mr. Bhimani testified he still attends the University and is part of the epee program. He did apply for employment but has not heard back. There was no evidence presented this was for costs savings or proximity to potential employment. There was no evidence from Mr. Bhimani to suggest those reasons, it appears the evidence presented by Mr. Bhimani was "I am the son I wish to live there". I am not satisfied based on the lack of evidence there was a genuine intention to occupy the rental unit for residential purposes for a period of one year.
24. As a result, the Landlord's application shall be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

September 7, 2023

Date Issued

Anthony Bruno

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.