



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

Citation: Shahid v Blagdon, 2023 ONLTB 54609

Date: 2023-08-30

File Number: LTB-L-014226-23

In the matter of: BASEMENT, 13 ABERCROMBIE CRES
BRAMPTON ON L7A4N1

Between: Rabia Shahid Landlords
Chaudhry Khurram Anwar

And

James Blagdon Tenant

Rabia Shahid and Chaudhry Khurram Anwar (the 'Landlords') applied for an order to terminate the tenancy and evict James Blagdon (the 'Tenant') because:

- the Landlords 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 June 15, 2023.

The Landlords, the Landlord's witness, Emaan Anwar and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy and/or the claim for compensation in the application. Therefore, application will be granted and the tenancy will terminate
2. The Tenant was in possession of the rental unit on the date the application was filed.

Landlord's Own Use

3. On January 28, 2023, the Landlords gave the Tenant an N12 notice of termination with the termination date of March 31, 2023. The N12 claims that the Landlord requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child for a period of at least one year.
4. The rental unit is in the basement of a house. The main unit has 3 bedrooms and 2 bathrooms and is currently occupied by the Landlord, their 3 children and 2 aging parents. A total of 7 people live in the main unit.
5. The Landlord requires the rental unit as their family is growing and additional space is required. They would like to have the rental unit back so that their 16-year-old daughter can move and have her own space as she is currently sharing a room with her younger siblings. As a result, the Landlord's require the basement rental unit for the purpose of residential occupation.
6. It was the Tenant's position that the Landlord want the rental unit empty in order to sell the house. The Tenant provided evidence in the form of video recordings that the Landlord stated to him that he was in financial trouble and needed to sell the house. The recordings were from October 2020, March 6, March 7 and March 13, 2021. On March 8, 2021 the Tenant had a recording of the Landlord indicating that he was going to live with his brother after the rental unit was sold.
7. The Landlord responded to these allegations indicating that during the COVID-19 pandemic, they had a severe financial hardship and the family went to Pakistan from December 2020 to March 2021. They were not sure if they should sell the house or downsize. They decided against selling in 2021 as their now 16-year-old daughter started high school in Brampton close to their home. In addition, the financial hardships they were once experiencing resolved as businesses started opening up in early 2022.

Analysis

8. The evidentiary burden rests with the individual wishing to occupy the unit to establish on a balance of probabilities that they will move into the rental unit for at least 1 year for the purpose of residential occupation.
9. In the leading case law involving a Landlords' 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...”
10. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are “largely irrelevant”.

11. The Tenant testified that the Landlords have previously indicated that they were in financial difficulty and were going to sell the house. The Landlord disputed this allegation. It was previously their intention to sell during the COVID lockdown when they were in financial difficulty. At the current time, they have no intention of selling the house.
12. I find that the Landlords gave the N12 in good faith and genuinely intend to have their child move into the rental unit and live there for at least once year once its vacated. While the Landlord's motives are largely irrelevant, I find that the Landlords intend to move into the unit because they have a large number of people residing in the rental unit and require the additional space so that their daughter has her own room.

Compensation

13. The Landlords have compensated the Tenant an amount equal to one month's rent by March 31, 2023.
14. The Tenant was required to pay the Landlords \$2,123.84 in daily compensation for use and occupation of the rental unit for the period from May 1, 2023 to June 15, 2023. Any rent payments made by the Tenant during this period shall be subtracted from this amount.
15. Based on the Monthly rent, the daily compensation is \$27.95. This amount is calculated as follows: \$850.00 x 12, divided by 365 days.
16. The Landlords collected a rent deposit of \$850.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$74.52 is owing to the Tenant for the period from October 1, 2017 to June 15, 2023.
17. 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

18. The Tenant submitted into evidence that he has mental and physical health issues the prevent him from meeting new people. The Tenant also suffers from chronic pain and has been diagnosed with osteoarthritis which makes moving round difficult. The Tenant has limited financial means and is on ODSP which provides a challenge in this rental market. The Tenant also testified that he has community supports such as doctors, dentist and family close by and would like to remain close to them.

19. The Tenant requested 5-6 months to find a new place to live. I find it would be unfair to grant the lengthy delay the Tenant requested. I do however find that 30-day delay is fair in the circumstances, so the Tenant can arrange their affairs and move.
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 not be unfair to postpone the eviction until September 30, 2023 pursuant to subsection 83(1)(b) of the Act.

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. As of June 15, 2023, the total amount the Tenant owes the Landlords is \$1,199.32. This amount consists of \$2,123.84 the Tenant owe the Landlords for compensation for the use of the unit from May 1, 2023 to June 15, 2023, less \$924.52 the Landlords owe the Tenant for the rent deposit and interest on the rent.
5. The Tenant shall also pay the Landlords compensation of \$27.95 per day for the use of the unit starting June 16, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlords 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.

August 30, 2023

Date Issued

Camille Clyne

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 February 21, 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.