



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

**Citation:** Fiorino v Perry, 2023 ONLTB 56582

**Date:** 2023-08-22

**File Number:** LTB-L-015112-23

**In the matter of:** 245 SEARLE AVE  
NORTH YORK ON M3H4B8

**Between:** Michele Fiorino Landlord

**And**

Samantha Perry Tenant

Michele Fiorino (the 'Landlord') applied for an order to terminate the tenancy and evict Samantha Perry (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 June 15, 2023.

The Landlord, the Landlord's representative, Latanya Pusey 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 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 February 15, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord. for a period of at least one year.
4. The Landlord testified that he has had a dispute with the next-door neighbour at his current home that has led to him being charged with assault. The Landlord provided documentary evidence of an Undertaking from the Ontario Court of Justice with respect to the charges, the next court date and additional conditions. The Landlord wishes to move away from his neighbour to avoid causing any further issues.
5. The Tenant is opposed to the Landlord's application. It was the Tenant's position that the Landlord has not served the notice of termination and filed the application in good faith.
6. The Tenant testified that in the tenancy began in 2007. Her mother was the lease holding tenant at the time. In 2019, the Landlord served an N12 notice of termination to the mother to end the tenancy as the Landlord required the rental unit for his mother-in-law. In actual fact, the Landlord wanted to increase the rent and the mother's tenancy ended and the Tenant over the rental unit in her name at a higher rent. The Tenant is of the opinion that she is currently in the same situation as the Landlord lives one street away.
7. The Tenant also asserted in 2019 that at one point the Landlord indicated that his mother might move in but was not sure. The Tenant did not have any concrete evidence regarding the discussions in 2019 and the Landlord has not made any statement to the Tenant about selling the house or having his mother-in-law move into the rental unit since 2019.
8. The Landlord responded to these allegations indicating that in this case he needs to move away from his neighbour due to the criminal charges that he is facing.

### Analysis

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. Based on the evidence before me and on a balance of probabilities, I find the Landlord genuinely intends to occupy the rental unit for a period of not less than 1 year. While the Landlord's motives are largely irrelevant, I find that the Landlord intends to move into the

unit because of an ongoing dispute in their current residence and have the option of moving into the rental unit to avoid any further issues.

12. As such, I find the Landlord in good faith requires possession of the rental unit for resident occupation and the application is granted.

#### Compensation

13. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2023. The cheque was issued to the Tenant on April 1, 2023 however it is yet to be cashed.
14. The Tenant was required to pay the Landlord \$3,478.36 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 \$75.62. This amount is calculated as follows: \$2,300.00 x 12, divided by 365 days.
16. The Landlord collected a rent deposit of \$2,300.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$128.45 is owing to the Tenant for the period from August 1, 2019 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 testified that the current rental market provides some issue to finding a new place to live. In addition, her elderly grandmother lives close by so she would like to stay in the neighbourhood.
19. 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.

#### **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 2, 2023.
2. If the unit is not vacated on or before September 2, 2023, then starting September 3, 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 3, 2023.
4. As of June 15, 2023, the total amount the Tenant owes the Landlord is \$1,049.91. This amount consists of \$3,478.36 which represents compensation for the use of the unit from May 1, 2023 to June 15, 2023, less owes \$2,428.45 which is the amount of the rent deposit and interest on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$75.62 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 Landlord the full amount owing on or before September 2, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 3, 2023 at 6.00% annually on the balance outstanding.

**August 22, 2023**

**Date Issued**

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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 27, 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.