



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

Citation: Campbell v Devine, 2023 ONLTB 56336

Date: 2023-08-14

File Number: LTB-L-042351-22

In the matter of: 58 AUDREY AVENUE GUELPH
ON N1E5Y2

Between: Scott Campbell Landlord

And

Brian Devine Tenants
Angie Devine

Scott Campbell (the 'Landlord') applied for an order to terminate the tenancy and evict Brian Devine and Angie Devine (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 20, 2023.

The Landlord's Legal Representative Tim Kelly, the Landlord, Landlord's witness Lily Campbell, and the Tenants attended the hearing. The Tenants spoke with Tenant Duty Counsel prior to the hearing.

Determinations:

1. The Tenants raised a preliminary issue that there is more than one Landlord. The Landlord stated that Kevin Drexler is a 50% co-owner of the property, but Scott Campbell handles all Tenant issues and rent payments. Scott Campbell testified that Mr. Drexler is aware of the application.

2. 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 is terminated effective August 25, 2023.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. On April 29, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of June 30, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation by his daughter.
5. The Landlord has compensated the Tenants an amount equal to one month's rent by June 30, 2022.
6. The Tenants were required to pay the Landlord \$9,511.23 in daily compensation for use and occupation of the rental unit for the period from July 1, 2022 to March 20, 2023.
7. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
8. The Landlord collected a rent deposit of \$1,000.00 from the Tenants and this deposit is still being held by the Landlords.
9. Interest in the amount of \$153.51 on the rent deposit is owing to the Tenants for the period from July 1, 2012 to March 20, 2023.

Good Faith

10. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (Act). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 Notice, the person named on the notice, in good faith, the unit for residential use for a period of at least one year.
11. Lily Campbell, the Landlord's daughter, signed a Declaration dated June 6, 2022 confirming her intention to reside in the rental unit for at least one year.
12. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC) where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
13. Lily Campbell testified that she currently resides with her parents in Orton, Ontario and works at a daycare in Fergus, approximately 20-25 minutes' drive away. She stated that she wishes to move out from her parents' home and find work in Guelph. She testified that she has a particular daycare in mind and has been in contact with them in the past. It is a

2-minute walk from the rental unit. She testified that there are no daycares in Orton, and one in Fergus, while there are 5 or 6 in Guelph.

14. Angie Devine (AD) testified on behalf of the Tenants. She testified that in April 2022 the Landlord had informed the Tenants that he intended to sell the property, and that when he discovered that he was unable to sell it, he issued the N12 Notice to force them to leave.
15. The Landlord testified that he and Mr. Drexler had been thinking of selling the property in April 2022 for personal reasons and he had emailed the Tenants offering them 90 days to vacate the rental unit. He testified that he did not serve an N12 Notice on the Tenants and had not had legal advice about the tenancy prior to sending the email. He testified that they changed their minds about selling the property.
16. He stated that the family had already been looking for a rental unit for his daughter and her occupying the unit was "plan B." It would also mean that she would not be paying rent to someone else.
17. The Tenants claim that the timing between the Landlord finding out that the tenancy would not be terminated by selling the property and him serving the N12 is an indication of bad faith. AD maintained that the Landlord could have moved his daughter to a different property. As noted above, the Landlord's motivations for choosing a particular unit are irrelevant.
18. While the timing could possibly point to bad faith, the test is the genuineness of the intention for the Landlord's daughter to occupy the rental unit at the time the N12 was served. The Landlord testified that the plan had changed after the original idea to sell the property. The Landlord's daughter testified that her employment prospects were better if she moved into the rental unit and being able to walk to work would save both time and gas.
19. I therefore find that the Landlord in good faith requires possession of the rental unit for the purpose his daughter's residential occupation for a period of at least one year.

Relief from eviction

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. AD testified that she had been looking for other accommodation since the N12 was served (approximately 11 months before the date of the hearing) but was unable to find anything. She stated that other rental units were unaffordable for the Tenants, and that it was difficult to finding housing as they owned a cat and a dog. She testified that she had expected to live in the rental unit for 20 years.

22. Due to the date of this order, approximately 16 months have passed from the date that the N12 was served. The Landlord cannot reasonably be expected to wait indefinitely for the Tenants to secure alternate accommodations, and they have already effectively benefitted from a delay to an order for eviction.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated as of August 25, 2023. The Tenants must move out of the rental unit on or before August 25, 2023.
2. The Tenants shall pay to the Landlord \$9,511.23 (less any rent paid during this period), which represents compensation for the use of the unit from July 1, 2022 to March 20, 2023, less the rent deposit and interest the Landlords owe on the rent deposit.
3. The total amount the Tenants owe the Landlord is \$8,357.72 (less any rent paid during this period).
4. The Tenants shall also pay to the Landlord \$36.16 per day for compensation for the use of the unit from March 21, 2023 to the date that they move out of the unit (less any rent paid during this period).
5. If the Tenants do not pay the Landlord the full amount owing on or before August 25, 2023, the Tenants will start to owe interest. This will be simple interest calculated from August 26, 2023 at 6.00% annually on the balance outstanding.
6. If the unit is not vacated on or before August 25, 2023, then starting August 26, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 August 26, 2023.

August 14, 2023

Date Issued

Margo den Haan

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 26, 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.