



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

Citation: Ghorbani v Sobhani, 2023 ONLTB 55000

Date: 2023-08-14

File Number: LTB-L-057361-22

In the matter of: 810, 28 Byng Avenue
Toronto ON M2N4K3

Between: Abdollah Ghorbani Landlord
Efat Sallahi

And

Morteza Sobhani Tenant
Maryam Maleki

Abdollah Ghorbani and Efat Sallahi (the 'Landlord') applied for an order to terminate the tenancy and evict Morteza Sobhani and Maryam Maleki (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 April 18, 2023.

The Landlord and the Landlord's representative Bilal Kinaci and the Landlord's witness Jinoo Ghorbani
And the Tenants 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 the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenants is terminated and the Tenants must vacate the rental unit on or before September 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. **N12 Notice of Termination**

Landlord's Own Use

On October 11, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of December 14, 2022. The Landlord claims that they require vacant

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possession of the rental unit for the purpose of residential occupation by the Landlord's daughter.

4. The N12 was served pursuant to section 49 of the Residential Tenancies Act, 2006 (Act). Section 49(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 Landlord required, in good faith, the unit for residential occupation.
5. The Landlord has compensated the Tenant an amount equal to one month's rent by December 14, 2022.
6. The Landlord's daughter testified that she wants to move into the rental unit as she currently lives with her parents. She would like to move into the rental unit so that she can become employed in the community where the rental unit is. The Tenants testified that the reason for the notice is that the Landlord attempted to charge an illegal rent increase.
7. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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.
8. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith. In my view there is no reason why the principles from these cases, which involved applications for the landlord's own use.
9. I find that the Landlords requires the rental unit in good faith for the purpose of their daughter's residential occupation. 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 August 1, 2023 pursuant to subsection 83(1)(b) of the Act.

Daily compensation, NSF charges, rent deposit

10. The Tenant was required to pay the Landlord \$8,835.62 in daily compensation for use and occupation of the rental unit for the period from December 15, 2022 to April 18, 2023.
11. Based on the Monthly rent, the daily compensation is \$70.68. This amount is calculated as follows: \$2,150.00 x 12, divided by 365 days.
12. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
13. The Landlord collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from June 15, 2021.
14. 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.

15. The Landlord's daughter testified that she would like to take possession of the rental unit as soon as possible because the delay in the Tenants vacating the rental unit has caused her to lose time for her athletic training and job sourcing. 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 August 25, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Landlord's daughter does not have employment in place or prove that the athletic training she testified she could do in the community of the rental unit are urgent circumstances to occupy the rental unit immediately.
17. The Tenants are newcomers to Canada and have faced challenges finding housing. Delaying the eviction until September 30, 2023 will allow the Tenants more time to find alternate housing and support services for newcomers experiencing housing challenges that may assist them in relocating. I find to allow the Landlord's daughter to move in immediately given the Tenant's circumstances would prejudice the Tenants.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before September 30, 2023.
2. The Tenant shall pay to the Landlord \$8,835.62, which represents compensation for the use of the unit from December 15, 2022 to April 18, 2023.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. The Landlord owes \$2,150.00 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
5. The total amount the Tenant owes the Landlord is \$6,871.62.
6. If the Tenant does not pay the Landlord the full amount owing on or before August 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 26, 2023 at 6.00% annually on the balance outstanding.
7. 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.
8. 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.

August 14, 2023
Date Issued

 Maria Shaw
 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.