



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

Citation: Huangfu v Tang, 2023 ONLTB 50301

Date: 2023-08-11

File Number: LTB-L-069710-22

In the matter of: 3205, 45 CHARLES ST E TORONTO
ON M4Y0B8

Between: Yan Huangfu Landlord

And

Jia Ju (David) Tang Tenant

Yan Huangfu (the 'Landlord') applied for an order to terminate the tenancy and evict Jia Ju (David) Tang (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 3, 2023. The Landlord's agent, M. Qin, their witness, L. Qin, and their legal representative, K. Sinipostolova and the Tenant's agent, L. Xiang attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is granted, and an eviction order shall issue.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 21, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 26, 2023. The Landlord claims that they require vacant

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

4. The Landlord has compensated the Tenant an amount equal to one month's rent by January 26, 2023.
5. The Landlord collected a rent deposit of \$2,000.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$49.21 is owing to the Tenant for the period from November 1, 2021 to May 3, 2023.
6. 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.

Landlord's Evidence:

7. There is no dispute that sometime in October 2020 there was a flood in the rental unit. As of the date of the hearing the rental unit still had some cosmetic defects that the Landlord intends to repair once they regain possession of the rental unit.
8. The Landlord called their child as a witness, who is the person intending to occupy the rental unit. She testified that she currently lives in another rental unit owned by the Landlord. The rental unit is closer to her work and because her employer would like her to come into the office more frequently and so she would like to be closer to her employment. She stated that she would remain in the rental unit indefinitely, but for at least one year.
9. The Landlord and their witness were asked multiple times during the Tenant's cross examination the reason for the eviction which was consistently answered, and the reason stated that it was for their child's use.

Tenant Evidence:

10. The actual Tenant was not present at the hearing, however sent an agent to speak on his behalf (the Tenant's mother). The Tenant submitted that she did not believe that the Landlord's daughter would move into the rental unit because she believed that the Landlord would either sell the rental unit for a high profit or re-rent the rental unit at a much higher rate per month. However, there was no evidence to support this conclusion educed at the hearing. Based on the evidence provided at the hearing, I find that this is more likely an assumption made by the Tenant and was not grounded by any concrete evidence.

Analysis:

11. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.

12. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

“...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal”.

13. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the *Tenant Protection Act, 1997, S.O. 1997, c. 24. The court referred to *Feeney, supra*, and held that:*

“...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA.”

14. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

“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.”

15. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
16. I am satisfied that on a balance of probabilities the Landlords genuinely intend to move into the rental unit. Their testimony was creditable and therefore reliable. I am satisfied that the Landlords have met the “good faith” requirement as set out in the Act.

Relief from Eviction:

17. 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.
18. Although the Tenant did not attend the hearing and thus, I did not have the opportunity to canvas the Tenant with respect to impact the eviction would have on them. However, the agent that the Tenant sent was their mother, who seemed to have knowledge of what the

Tenant generally goes through in their day-to-day life, and so I accept the submissions of the Tenant's agent provided at the hearing.

19. The Tenant has lived in the rental unit since 2021 and the rental unit is situated close to the Tenant's work. The Tenant's agent testified that the Tenant works odd hours and works about 70 hours a week and so finding time to look at alternative accommodations is challenging.
20. The Landlord is not at risk of losing their home unlike that of the Tenant. In consideration of both parties circumstances, I find September 30, 2023 to be reasonable in the circumstances. The Tenant has been given since the date of the hearing to look for other accommodations and the above termination date is not so extended as to severely prejudice the Landlord.

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 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 October 1, 2023.
4. The Landlord shall apply the last month's rent deposit to the last month of the tenancy and shall credit the Tenant any interest owing on that deposit.

August 11, 2023

Date Issued

Curtis Begg

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 March 1, 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.