



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

Citation: Ho v Cacilhas, 2023 ONLTB 54817

Date: 2023-08-10

File Number: LTB-L-043574-22

In the matter of: 1112 WELLINGTON AVE
WINDSOR ON N9A5J9

Between: Quoc Tri ngoc Ho Landlord
Huynh Ai linh Vu

And

Joseph Cacilhas Tenant
Sarah Kozak

2023 ONLTB 54817 (CanLI)

Quoc Tri ngoc Ho and Huynh Ai linh Vu (the 'Landlord') applied for an order to terminate the tenancy and evict Joseph Cacilhas and Sarah Kozak (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 21, 2023.

The Landlord and the Landlord's representative Yunquiao Zhang 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.

N12 Notice of Termination

Landlord's Own Use

3. On July 26, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of the Landlord's residential occupation.
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 resides on the main floor of the home. He testified that he requires the entire rental unit for his family's use due to lack of space housing his family at this point in time. He purchased the home with the intention of occupying the entire rental home. Since he had been neighbours with the Tenants prior to purchasing he extended the time for the Tenants to stay in the basement rental unit for a year after purchasing the rental unit.
6. The Tenant did not provide evidence that the Landlord did not intend to occupy the rental unit for a period of one year, rather the Tenant challenges the application based on the Tenant's circumstances and challenges in finding an alternate rental unit for his family.
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, are not applicable in a case such as this where the unit is required for the purchaser's own use.
9. I find that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
10. The Landlord testified that he attempted to give the Tenant an amount equal to one month's rent by September 30, 2022 for the compensation required with the N12 notice. The Tenant refused to accept the rent compensation and testified that he believed if he did so he would imply that he consented to the eviction. The compensation is owed to the Tenant and shall be paid by the Landlord by September 30, 2023. The Landlord may waive one month's rent the Tenant owes as payment for the one month's rent compensation owed with the N12 notice.

Daily compensation, NSF charges, rent deposit

11. The Tenant was required to pay the Landlord \$4,444.67 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to March 21, 2023.
12. Based on the Monthly rent, the daily compensation is \$25.84. This amount is calculated as follows: \$786.00 x 12, divided by 365 days.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. The Landlord collected a rent deposit of \$650.00 from the Tenants 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 January 8, 2021.
15. 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

16. 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. The Tenants testified that due to their financial circumstances it would be difficult to find an affordable rental unit. The Tenant Joseph Cacilhas has just become employed. The Tenants have childcare in place for their children in the community and delaying the eviction will allow additional time for the Tenants to seek an alternate rental unit in the same community.

It is ordered that:

1. 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 shall pay to the Landlord \$4,444.67, which represents compensation for the use of the unit from October 1, 2022 to March 21, 2023.
3. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
4. The Landlord owes \$650.00 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 \$3,980.67.
6. If the Tenant does not pay the Landlord the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 31, 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 10, 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 29, 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.