



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

Citation: Valerio v Desousa, 2023 ONLTB 54589

Date: 2023-08-10

File Number: LTB-L-071598-22

In the matter of: Main Floor, 270 RICHARD CLARK DR
NORTH YORK ON M3M1W4

Between: Jennifer Valerio Landlords
Antonio Valerio

And

Martin Desousa Tenants
Vanessa Teixeira

Jennifer Valerio and Antonio Valerio (the 'Landlords') applied for an order to terminate the tenancy and evict Martin Desousa and Vanessa Teixeira (the 'Tenants') because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on May 4, 2023.

The Landlords, the Landlord J Valerio's representative C Oliveria and the Tenant V Teixeira attended the hearing.

Determinations:

1. For the reasons that follow, I find that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation by the Landlords. The tenancy between the Landlords and the Tenants will be terminated August 31, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

The Uncontested Evidence

3. On November 28, 2022, the Landlords gave the Tenants an N12 notice of termination with the termination date of January 31, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by Landlord A Valerio for a period of at least one year.

Compensation

4. Section 48(1) of the Act requires the Landlords to provide compensation to the Tenants in an amount equal to one month's rent where an N12 notice is served. The Landlords were required to compensate the Tenants an amount equal to one month's rent by January 31, 2023.
5. It was uncontested that the Landlords informed the Tenants that the Tenants did not need to pay the rent for the month of January, 2023, and the Tenants did not pay the rent for January 2023. Therefore, I find that the Landlords have compensated the Tenants an amount equal to one month's rent by January 31, 2023.

The Landlords' good faith intention

6. The issue to be determined by the Board is whether the Landlords have satisfied the "good faith" requirement set out in subsection 48(1) of the Act which provides: a landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by:
 - (a) the landlord;
 - (b) the landlord's spouse
7. The onus is on the Landlords to establish that the Landlords in good faith require the rental unit for the purpose of residential occupation by the Landlords.
8. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [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...
9. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also found in *Salter* that the Landlord's motives are "largely irrelevant".
10. The Landlord A Valerio testified that he requires the rental unit reside in for a period of at least one year. He testified that the Landlords own two houses and that due to the breakdown in the marriage between the two Landlords he would be residing in this unit as his primary residence. This house is close to the other house the Landlords own and will enable the children to visit both residences and continue to attend the same school.

11. The Tenant V Teixeira testified that there had been an argument at the rental unit on November 9, 2022 and that she believes that the subsequent N12 Notice was given as a result of the altercation. She believes that the Landlords will reconcile immediately following the eviction of the Tenants and that the divorce is a ruse. She also testified that the Tenants have been looking for alternative housing and that they want to leave the rental unit but have been unable to secure a tenancy elsewhere.
12. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intentions. I am therefore satisfied on the balance of probabilities, that the Landlords, in good faith require possession of the rental unit for the purpose of residential occupation by the Landlord A Valerio for a minimum of one year.
13. Based on the Monthly rent, the daily compensation is \$67.73. This amount is calculated as follows: \$2,060.00 x 12, divided by 365 days.
14. At the date of the hearing, the Tenants were not in arrears of rent, and therefore no compensation is owing by the Tenants until June 1, 2023. If the Tenants have made any rent payments since the hearing, the payments must be applied to the compensation owing by the Tenants starting on June 1, 2023.
15. The Landlords collected a rent deposit of \$2,000.00 from the Tenants and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$146.19 is owing to the Tenants for the period from July 1, 2018 to May 4, 2023 .
16. 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

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 August 31, 2023 pursuant to subsection 83(1)(b) of the Act. The delay will allow the Tenants additional time to secure alternative housing while ensuring that the Landlord A Valerio will be able to occupy the unit prior to the beginning of the children's school year.

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 August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Landlords 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 Landlords on or after September 1, 2023.
4. As of June 1, 2023, the Landlords owe to the Tenants \$2,146.19, which is the amount of the rent deposit and interest on the rent deposit, the Landlords may deduct from the amount owing to the Tenants daily compensation of \$67.73 per day for the use of the unit starting May 5, 2023 until the date the Tenants move out of the unit.
5. The Landlords and/or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

August 10, 2023

Date Issued

Heather Kenny

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.