



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

Citation: Gaspar v Samuels, 2023 ONLTB 54599

Date: 2023-08-09

File Number: LTB-L-072656-22

In the matter of: Main Floor, 18 MARLBOROUGH ST W LEAMINGTON
ON N8H1V7

Between: Sarkis Gaspar Landlords
Chamel Youssef Gaspard

And

George Samuels Tenant

Sarkis Gaspar and Chamel Youssef Gaspard (the 'Landlords') applied for an order to terminate the tenancy and evict George Samuels (the 'Tenant') because:

- the Landlords in good faith requires 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 Tenant remained in the unit after the termination date.

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

The Landlords' representative M Gebriel and the Tenant 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 their daughter. The tenancy between the Landlords and the Tenant will be terminated September 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

The Uncontested Evidence

3. On November 23, 2022, the Landlords gave the Tenant 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 their daughter for a period of at least one year.

Compensation

4. Section 48(1) of the Act requires the Landlords to provide compensation to the Tenant 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. The Landlords' representative M Gebriel testified that he personally placed the compensation cheque in the amount of \$840.00 into the Tenant's mailbox on December 27, 2023. He said that this was the same location where he placed the N12 Notice on November 23, 2022.
6. The Tenant testified that although he checks the mailbox frequently, and did receive the N12 Notice, he did not receive the compensation cheque.
7. There is no dispute that the compensation cheque was not cashed.
8. Section 83(4) of the Act requires the Board to refuse the Landlords' application for termination of tenancy for the Landlords' own use if the compensation was not paid to the Tenant prior to the termination date in the N12 Notice.
9. Having regard for the testimony of both the Landlords' representative and the Tenant, I find that the Landlords did attempt to pay the compensation required, and that the Tenant did not receive that payment. However, this does not mean that the Landlords are free of their obligation to compensate the Tenant. I will exercise my discretion under section 190(2) of the Act and order the Landlords to pay the compensation to the Tenant by August 31, 2023.

The Landlords' good faith intention

10. 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 for a period of at least one year by:

(c) a child or parent of the landlord or the landlord's spouse

11. 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 their daughter for a period of at least one year.
12. 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...

13. Thus, the Landlords must establish that their daughter genuinely intends to move into the unit. The Court also found in Salter that the Landlord's motives are "largely irrelevant".
14. The Landlords' representative submitted a declaration from the Landlords' daughter, V Gaspar that she intends to reside in the unit in good faith for at least one year.
15. Neither the Landlords nor their daughter attended the hearing to provide testimony.
16. The Tenant testified that he did not believe that the Landlords' required the rental unit that he occupies as there were other alternative rental units that were available that the Landlords owned and that their daughter could move into. The Tenant said that there was a unit available in the newly renovated building immediately next to his unit, however the Tenant did not know who owned that building.
17. Although neither the Landlords nor their daughter attended the hearing, I am nonetheless inclined to accept the declaration of the Landlords' daughter that she, in good faith, intends to occupy the rental unit for at least one year. The fact that there may be other units available to the Landlord does not matter so long as the daughter genuinely intends to move into the rental unit. 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 their daughter for a minimum of one year.
18. Based on the Monthly rent, the daily compensation is \$27.62. This amount is calculated as follows: \$840.00 x 12, divided by 365 days.
19. At the date of the hearing, the Tenant was not in arrears of rent and therefore no compensation is owing by the Tenant until June 1, 2023. If the Tenant has made any rent payments since the hearing, the payments must be applied to the compensation owing by the Tenant starting on June 1, 2023.
20. There is no last month's rent deposit.

Relief from Eviction

21. The Tenant testified that he resides in the unit with his children and that they attend schools in the area. He has been looking for other rental units, however he has not yet been successful in obtaining a tenancy.
22. 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 delay will allow the Tenant additional time to secure alternative housing.

It is ordered that:

1. If the Landlords have not already done so, the Landlords shall pay to the Tenant \$840.00 which represents the compensation owed as a result of the Landlord's N12 Notice no later than August 31, 2023.
2. If the Landlords make the payment required in paragraph 1 above, the tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2023.
3. If the Landlords do not make the payment required in paragraph 1 above, the tenancy between the Landlords and the Tenant shall continue.
4. 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.
5. 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.
6. The Tenant shall pay the Landlords compensation of \$27.62 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlords the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

August 9, 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 April 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.