



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

Citation: Rezapoor v Markiewitsch (aka markovic), 2023 ONLTB 52409

Date: 2023-07-31

File Number: LTB-L-039011-22

In the matter of: A, 2986 DUFFERIN ST
TORONTO ON M6B3T3

Between: Ali-reza Rezapoor Landlord
Vali allah Khadivi

And

Theodore (aka ted) Markiewitsch (aka markovic) Tenant

Ali-reza Rezapoor and Vali allah Khadivi (the 'Landlord') applied for an order to terminate the tenancy and evict Theodore (aka ted) Markiewitsch (aka markovic) (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.

This application was heard by videoconference on March 8, 2023.

The Landlord and the Landlord's representative Parham Azizi and the Tenant 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 tenancy between the Landlord and the Tenant is terminated and the Tenant must vacate the rental unit on or before August 31, 2023.

N12 Notice of Termination

Landlord's Own Use

On April 25, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on May 4, 2022 with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.

2. The lawful monthly rent is \$865.00.
3. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022.

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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 testified that he currently resides with his parents and would like to move into the rental unit with his girlfriend immediately and will remain in the rental unit for a period of at least one year. The Tenant has been served three N12 notices prior but each notice has been found deficient at the hearings. The Landlord has been attempting to take possession of the rental unit for over a year and a half.
6. 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.
7. The Tenant testified that he believes the notice is served in bad faith as the previous Landlord served an N12 notice stating that his wife was moving into the unit and shortly thereafter, he sold the property. The also stated that he has lived in the rental unit for 43 years and is unable to find a suitable rental unit but did not include any documented evidence of his efforts to find a new rental unit.
8. The service of the previous notices by this Landlord were void due to defect in the notice and as a result an application could not be brought forward to the Board. I also find that the previous Landlord's N12 notice is irrelevant as the current Landlord has demonstrated the good faith requirement to occupy the rental unit

Daily compensation, NSF charges, rent deposit

9. Based on the Monthly rent, the daily rent/compensation is \$28.43. This amount is calculated as follows: \$865.00 x 12, divided by 365 days.
10. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
11. There is no last month's rent deposit.

Relief from eviction

12. The Landlord requests that he take possession of the rental unit immediately. 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 Tenant has resided in the rental unit for 43 years and may have difficulty finding a rental unit with a comparable rate of rent. Delaying the eviction will allow the Tenant additional time to seek an alternate rental unit.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated and the Tenant shall move out of the rental unit on or before August 31, 2023.
2. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
3. The Tenant shall pay to the Landlord the daily compensation of \$28.43 per day for the use of the rental unit from June 30, 2022 until the date that the Tenant vacates the rental unit.
4. If the unit is not vacated on or before August 31, then starting September 1, 2023, the Landlord 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 Landlord, on or after September 1, 2023.

July 31, 2023
Date Issued

Maria Shaw
, 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.