



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

Citation: Savita Budhram v Marcella Durhand, 2023 ONLTB 34537

Date: 2023-07-31

File Number: LTB-L-056582-22

In the matter of: BASEMENT, 4 SUMMERLEA ST MARKHAM
ON L3S4H6

Between: Savita Budhram Landlord

And

Marcella Durand Tenant

Savita Budhram (the 'Landlord') applied for an order to terminate the tenancy and evict Marcella Durhand (the 'Tenant') because:

- the Tenant, another occupant of the rental unit or someone the Tenant permitted in the residential complex has substantially interfered with the reasonable enjoyment or lawful right, privilege or interest of the Landlord or another tenant;
- 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 April 18, 2023.

The Landlord, the Landlord's Legal Representative R. Mahavalirajan, Tenant support Debbie Lawrence and the Tenant attended the hearing.

Determinations:

1. The Tenant brought to the notice of the Board that her last name was misspelt in the application. Her last name is 'Durand' and not 'Durhand'. Since both parties were agreeable, I amended the application to the correct the last name of the Tenant.

2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of September 30, 2023.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N5 Notice of Termination – Substantial Interference

4. On September 22, 2022, the Landlord gave the Tenant an N5 notice of termination deemed served the same day. The notice of termination contains the following allegations:

September 22, 2023: The Tenant has parked her vehicle on the driveway which is not part of her lease agreement.
5. The Tenant stopped the conduct or activity or corrected the omission within seven days after receiving the N5 notice of termination. The Tenant testified that she rented parking from the neighbour and has been parking her car at the neighbour's driveway since September 2022. Evidence of the same was submitted. Therefore, the Tenant voided the N5 notice of termination in accordance with s.64(3) of the *Residential Tenancies Act, 2006* (Act) by ceasing to park the vehicle on the driveway. Hence this part of the Landlord's application is dismissed.

N12 Notice of Termination

6. On September 22, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served the same day with the termination date of November 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their son.
7. The Landlord had tried to compensate the Tenant an amount equal to one month's rent by November 30, 2022, as required by sections 48.1 and 55.1 of the Act. The cheque however misspelt the name of the Tenant and the Tenant also asserted that she never received the cheque. A copy of the cheque was put into evidence.
8. Since the Tenant has not received the compensation as required by the *Residential Tenancies Act, 2006* (the "Act") but I am satisfied that the Landlord in good faith attempted to pay, I will exercise my discretion under section 190(2) of the Act and extend the deadline for the Landlord to make the payment to the Tenant until August 15, 2023. The Landlord must ensure the Tenant's name is spelt correctly.

Good faith

9. The N12 notice was served pursuant to section 48(1) of *Residential Tenancies Act, 2006* (the 'Act') which states.

48 (1) 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, (a) the landlord;
(b) the landlord's spouse;
(c) a child or parent of the landlord or the landlord's spouse; or ... [Emphasis added]

10. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation for at least one year.
11. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
12. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC)).

Landlord's testimony

13. The Landlord testified that she and her family live on the main floor of the residential complex which is a 4-bedroom house The Landlord testified that her older son is almost 25 years old and would like to move into the rental unit, which is located in the basement, to have more privacy and his own space for long term use.
14. There was an affidavit submitted by the Landlord's son to confirm that he intended to live at the rental unit for residential purposes for more than a year.

Tenant's testimony

15. The Tenant testified that the Landlord has tried to raise her rent multiple times beyond the guideline limits. The Tenant has resisted the Landlord's efforts that is why the relationship deteriorated. The parking issue stemmed from this acrimonious relationship as well. The Landlord arbitrarily told the Tenant to stop parking her vehicle on the driveway because it was not part of the lease even when she had been doing so for the last nine years uninterrupted.
16. The Tenant also testified that the Landlord had served her with a N13 on January 21, 2022, which was withdrawn at the hearing held on September 21, 2022 and then the next day gave her a N12 on September 22, 2022 along with a N5 notice for parking.

17. The Tenant also added that the Landlord gave her a N1 notice on September 30, 2022, to raise her rent from \$1011.83 to \$1,026.00 as per the guideline but she was asked for more rent, so she has been paying \$1,050.00 to the Landlord since January 2023. Proof of payments made, were submitted. The Tenant also submitted that the Landlord had tried to raise her rent to \$1,050.00 in August of 2021 with effective date of October 1, 2021. The Tenant's counsel wrote to the Landlord that there was a rent freeze in Ontario, and she cannot raise the Tenants rent.
18. The Tenant urged the Board to keep her circumstances at the forefront while deciding the termination date. The Tenant is a self-employed hairdresser whose work took a hit in COVID-19. She has still managed to always pay the rent on time. She is a single person with limited means and with the current rental market, most comparable places are beyond her reach. The Tenant is having a hard time finding work in this market.
19. The Tenant has known the Landlord's sons for almost a decade, and she is very fond of them. She is ready to vacate the premises if the son genuinely wants to reside in the rental unit, but she seeks time and compensation from the Landlord for treating her poorly.

Analysis:

20. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation for himself.
21. I find based on the totality of evidence that the Landlord in good faith requires possession of the rental unit for the purpose of their older son's residential occupation for a period of at least one year. The Landlord's son has grown older over the years of tenancy and may feel the need of a private space for himself. The Landlord testified that the son is 25 years old now and even though she has enough space in the house upstairs, he would like to have his own space. The reasonableness of the Landlord's intentions is not before me just the good faith intentions to occupy the rental unit for a period of residential use as specified in the notice.
22. The Tenant has been making rent payments in time and there is no rent or compensation due as of the hearing date.
23. Based on the Monthly rent, the daily compensation is \$32.91. This amount is calculated as follows: \$1,001.00 x 12, divided by 365 days.
24. The Landlord collected a rent deposit of \$970.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$133.29 is owing to the Tenant for the period from October 1, 2014 till September 30, 2023.
25. 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

- 26. 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. There is no prejudice to the Landlord since the son is living with the parents and they have adequate space. The extra time will give the Tenant, time to find suitable accommodation in her budget.
- 27. The Tenant also requested the Board for adequate compensation. The Act authorises the Board to ensure the Tenant is paid one month's rent as compensation and I have ordered the same to be paid to the Tenant before August 15, 2023. There is no other allowance that can be made in this application.

It is ordered that:

- 1. The Landlord shall pay to the Tenant compensation in the amount of \$1,050.00 on or before August 15, 2023 and ensure that the Tenant's name is spelt correctly.
- 2. If the Landlord makes the payment required by paragraph one above by August 15, 2023, 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.
- 3. If the Landlord does not make the payment required by paragraph one above by August 15, 2023, the tenancy between the Landlord and the Tenant is not terminated and the Tenant does not have to vacate.
- 4. 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.
- 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 October 1, 2023.
- 6. As of May 1, 2023, the Landlord also owes the Tenant \$1,103.49, which represents the Tenant's rent deposit of \$970.00 and \$133.29 in interest on last month's rent deposit.
- 7. The Landlord is authorized to deduct from amount owing to the Tenant \$32.91 per day for compensation for the use of the unit starting May 1, 2023, to the date the Tenant moves out of the unit. If the Tenant has made rent payments from May 1, 2023, onwards these shall be applied to the compensation owing to the Tenant.
- 8. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

July 31, 2023

_____ **Date Issued**

Sheena Brar

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 30, 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.