



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

Citation: Kuipers v Ciceri, 2023 ONLTB 52272

Date: 2023-07-26

File Number: LTB-L-038545-22

In the matter of: 2, 3 POTTINGER ST
LINDSAY ON K9V3X2

Between: Joanne Kuipers Landlord

And

Christina Ciceri Tenant

Joanne Kuipers (the 'Landlord') applied for an order to terminate the tenancy and evict Christina Ciceri (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.

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 March 8, 2023.

The Landlord and the Landlord's representative Carrie Alywin 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 and the claim for compensation in the application. Therefore, the tenancy between the Landlord and Tenant is terminated. The Tenant must vacate the rental unit on or before August 31, 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 7, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served July 8, 2022 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.

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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**^[NL(1)].
5. The Landlord testified that her living circumstances have changed since her husband has passed away and she no longer wishes to reside in the three-bedroom home she lives in. She intends to occupy the rental unit which is a much smaller home for her to manage.
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. 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.
8. The Tenant testified that she has been unable to find another rental unit in the same area and she must remain in the area to assist her elderly mother. The Tenant did not provide evidence of her efforts to find other housing since the notice was served.
9. The Tenant testified that there were other rental units available and that the Landlord could have occupied another unit in the building.
10. I find the Landlord has proved on a balance of probabilities that she 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. 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. This will allow the Tenant additional time to find alternate accommodation in the same community she resides in so that she can assist her elderly Mother.

Daily compensation, NSF charges, rent deposit

11. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022.
12. The Tenant was required to pay the Landlord \$6,163.00 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to March 8, 2023.
13. Based on the Monthly rent, the daily compensation is \$38.76. This amount is calculated as follows: \$1,178.98 x 12, divided by 365 days.
14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs..

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.

It is ordered that:

1. The Tenant shall pay to the Landlord \$6,163.00, which represents compensation for the use of the unit from October 1, 2022 to March 8, 2023.
2. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
3. The Landlord owes \$1,176.67 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.
4. The Tenant shall pay to the Landlord \$38.76 daily compensation for use of the rental unit beginning March 8, 2023 until the Tenant vacates the rental unit.
5. The Tenant shall vacate the rental unit on or before August 31, 2023.
6. 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.
7. 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.
8. If the Tenant does not pay the Landlord the full amount owing on or before August 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.

August 2, 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 7, 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.