



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

Citation: Mahbub Adem v Amanda Michelle Smith, 2023 ONLTB 39830

Date: 2023-07-25

File Number: LTB-L-078094-22

In the matter of: 35 MUIRFIELD DR
BARRIE ON L4N6J9

Between: Mahbub Adem Landlord

And

Amanda Michelle Smith Tenants
Ashley William Smith
Koby Will Smith

Mahbub Adem (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Michelle Smith, Ashley William Smith and Koby Will Smith (the 'Tenants') 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 May 15, 2023.

Only the Landlord and the Landlord's Legal Representative Andrew Choubeta attended the hearing.

As of 10:15 a.m., the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L2 Application Dismissed

1. For the reasons below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (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 by,
 - (c) a child of the landlord...
 - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
4. The N12 Notice of Termination gave the Tenants at least 60 days' notice. An email transfer of one month's rent was sent to the Tenants on the termination date listed in the N12. Therefore, the only issue to be determined in this application is whether the Landlord has satisfied the "good faith" requirement of subsection 48(1) of the Act.
5. On December 15, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on December 20, 2022 with the termination date of September 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord, Mr. Manbub Adem.
6. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023.
7. For the following reasons, I find that the Landlord has not established, on a balance of probabilities, they genuinely intend to move into the rental unit.
8. The onus is on the Landlord to prove his case. I find it particularly curious that the Landlord failed to testify at the hearing. Instead, the Landlord's Legal Representative Mr. Choubeta spoke on the Landlord's behalf despite the Landlord having been in the hearing room present.
9. The definition of "Landlord" in section 2 of the Act allows various people to be a landlord. But in an application, such as this, I would have found it highly beneficial to hear from Mahbub Adem himself since he was the one giving notice to the Tenants in the N12 that he requires vacant possession from them.

10. The Board did not have direct evidence from Mr. Adem who is listed on the N12 Notice of Termination. Although the matter was uncontested, there was no opportunity to clarify or cross exam the Landlord of his intention of the rental unit.
11. Mr. Adem checked off the N12 Notice of Termination, he attended as the only witness. Mr. Choubeta spoke on his behalf about the Landlords intention to move into the rental unit for at least one year. There was a 'hole in the evidence", as I did not hear from Mr. Adem himself about his true intentions. I would need to have heard evidence from the Landlord directly, Mr. Choubeta gave the only testimony about the Landlords intention. The Landlord Mr. Adem could have given direct testimony but failed to do so. I was provided no explanation why the Landlord Mr. Adem would not be testifying even though he was present and called in. I gave the evidence Mr. Choubeta presented little weight since it did not come directly from the Landlord.
12. Although the Declaration from Mr. Adem may have satisfied the technical requirement of section 72 of the Act, it did not clarify the question for me about what the Landlords true intentions were for the rental unit.
13. In *Parris v. Laidley, 2012 ONCA 755*, the Court of Appeal for Ontario stated that "drawing adverse inferences from failure to produce evidence is discretionary", and "the inference should not be drawn unless it is warranted in all the circumstances."
14. This is a contentious L2 application where the Landlord's and Tenants' credibility are central to the issues. Therefore, I find it surprising that Mr. Adem attended the hearing but did not provide the best, firsthand evidence about his intentions to move into the rental unit. The Landlord has the burden to prove his case. I find it appropriate in the circumstances to draw an adverse inference from Mr. Adem failure to provide important, first-hand testimony to support his application.
15. On a balance of probabilities, considering the evidence submitted as well as the negative inference drawn from evidence which was missing, I find the Landlord has not met the burden of proof to satisfy the application. I do not find the Landlord has established a good faith intention to move into the rental unit. As a result, the application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

July 25, 2023

Date Issued

Anthony Bruno

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.