



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

**Citation:** Troy Newton v Sheikh Saifuddin, 2023 ONLTB 47746

**Date:** 2023-07-06

**File Number:** LTB-L-042077-22

**In the matter of:** 108, 904 PAISLEY RD  
GUELPH ON N1K0C6

**Between:** Angela Ritchie Landlord  
Troy Newton

**And**

Sheikh Saifuddin Tenant

Angela Ritchie and Troy Newton (the 'Landlords') applied for an order to terminate the tenancy and evict Sheikh Saifuddin (the 'Tenant') because:

- the Landlords have entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 March 20, 2023.

The Landlords' Legal Representative Jane Dean, the Landlords, the Landlords' Witness real estate agent Rob Hans, and the Tenant attended the hearing. Angela Ritchie testified on behalf of the Landlords. The Tenant spoke with Tenant Duty Counsel prior to the hearing.

**Determinations:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated effective July 16, 2023 and the Tenant must vacate the rental unit.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On July 26, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served on July 27, 2022 with the termination date of September 30, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by the purchaser.
4. The rental unit is a condominium unit. The Landlords have proven that:
  - o the Landlord has entered into an agreement of purchase and sale of the residential complex.
  - o the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation. *Compensation*

5. Section 49.1(1) of the *Residential Tenancies Act, 2006* (Act) states:

A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

(a) the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under subsection 49 (1) or (2) ...

6. The Landlord testified that the required compensation in an amount equal to one month's rent was sent to the Tenant by courier by the termination date of September 30, 2022 but was not accepted. The compensation was then sent by mail to the Tenant, but the cheque was not cashed. The Tenant provided no evidence on this matter.
7. The Tenant refusing to accept or deposit the payment does not mean that the Landlords have not met their statutory obligation. I am satisfied that the Landlords met the requirements of the Act to provide compensation to the Tenant.

*Daily Compensation, last Month's Rent Deposit*

8. The Tenant was required to pay the Landlords \$7,870.68 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to March 20, 2023. Any rent paid during this period shall be deducted from this amount.
9. Based on the Monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
10. The Landlords collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$53.42 is owing to the Tenant for the period from June 26, 2021 to March 20, 2023.
11. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

*Good Faith*

12. The N12 was served pursuant to section 49 of the Act. Section 49(2) requires that, in order to be successful in this application, the Landlords must establish that at the time of the service of the N12 Notice, a purchaser required, in good faith, the unit for residential use.
13. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlords' 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. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice." By analogy, the test is the purchaser's good faith intention to occupy the premises.
14. The Landlords testified and submitted evidence that they entered into an unconditional Agreement of Purchase and Sale dated July 19, 2022 with Joseph Caldeira. The closing date was September 30, 2022. Mr. Caldeira provided a declaration which was filed with the application confirming that he required the rental unit for his residential use. The Landlords testified that the closing date has been extended several times because the Tenant has not vacated the rental unit.
15. At the hearing, Rob Hans, the real estate agent who handled the sale, testified that the purchaser also confirmed to him that he intends to reside in the rental unit and that he had no reason to doubt this statement.
16. The Tenant stated that he "had no evidence" that the rental unit had sold and that he had never spoken with the new owner. The Tenant testified in cross-examination that did not recall if he had ever asked the Landlords about the purchase.
17. The test to be met is the genuineness of the purchaser's intention to occupy the rental unit. Both the Landlord and their witness testified that they had information from the purchaser that this was his intention, they believed his statement, and the purchaser filed a declaration of his intention in accordance with the Act. The Tenant did not provide any evidence to challenge the purchaser's good faith intention to occupy the rental unit.
18. I therefore find that the purchaser in good faith requires the rental unit for the purpose of residential occupation.

*Relief from eviction*

19. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

20. The Tenant received the N12 notice almost 8 months prior to the date of the hearing. The Landlords testified that they had discussed the intention to sell the property with the Tenant as early as April 2022.
21. Under cross examination, the Tenant was unable to explain clearly why he had sublet the rental unit in February 2023 until the end of December 2023, other than to state that he had “family issues.”
22. The Tenant did not raise any circumstances for my consideration with respect to delaying the eviction. In fact, the Tenant stated that he was not actually living in the rental unit at the time of the hearing but confirmed that he was subletting the unit while living with his family in Guelph.
23. The Landlords have suffered significant prejudice as a result of having to repeatedly extend the closing date of the sale because the Tenant retained possession of the rental unit.
24. This order is being issued more than 3 months from the date of the hearing, meaning that the Tenant has already effectively benefitted from a delay in the eviction. The Tenant has been aware of the Landlords’ intentions for more than a year and further delay would result in further prejudice to the if the purchaser no longer wishes to extend closing dates and the sale is lost.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 16, 2023.
2. If the unit is not vacated on or before July 16, 2023, then starting July 17, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 July 17, 2023.
4. The Tenant shall pay to the Landlords \$5,017.44, which represents compensation for the use of the unit from October 1, 2022 to March 20, 2023 (\$7,870.86), less the rent deposit (\$1,400.00) and interest the Landlords owe on the rent deposit (\$53.42), less the statutory compensation (\$1,400.00). Any rent paid during this period shall be deducted from this amount.
5. The Tenant shall return the cheque for compensation provided by the Landlords.
6. The Tenant shall also pay the Landlords compensation of \$46.03 per day for the use of the unit starting March 21, 2023 until the date the Tenant moves out of the unit.

**July 6, 2023**

**Date Issued**

**Margo den Haan**

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 January 17, 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.