



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

Citation: Jason Hall v Nina Salameh, 2023 ONLTB 47614

Date: 2023-06-30

File Number: LTB-L-014460-23

2023 ONLTB 47614 (CanLII)

In the matter of: 124 DUNROBIN LANE
GRIMSBY ON L3M0H4

Between: Jason Hall Landlord

And

Nina Salameh Tenant

Jason Hall (the 'Landlord') applied for an order to terminate the tenancy and evict Nina Salameh (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 June 15, 2023.

The Landlord, the Landlord's Legal Representative Glenn Gosling and the Tenant attended the hearing. Prior to the commencement of the hearing, the Tenant spoke to Tenant Duty Counsel.

Determinations:

1. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The tenancy between the Landlord and the Tenant will be terminated.
2. On February 9, 2023, the Landlord gave the Tenant an N12 notice of termination for Landlord's own use. The termination date on the N12 notice is April 30 2023.
3. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') by filing with the Board a declaration signed by the Landlord on February 10, 2023 stating that in good faith they require the rental unit for their own personal use for a period of at least one year.

4. Section 48.1 of the *Act* requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the *Act* requires this compensation to be provided no later than on the termination date specified in the notice of termination of the tenancy given by the landlord.
5. The Landlord's Legal Representative stated that the amount of \$2,100.00, representing one month's rent, was provided to the Tenant on February 9, 2023 via money order.
6. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenant with a money order to cover one month's rent for the compensation required for the N12 notice by providing a money order to the Tenant dated February 2, 2023 which was delivered via registered mail on February 9, 2023. I further find that by doing so, the Landlord has satisfied the requirement under s.48.1 that they "compensate" the Tenant.
7. The Landlord, Jason Hall ('JH') testified that he and his partner are expecting a child and they sold their condominium in Burlington. JH also stated that his financial situation has drastically changed since the sale of the Burlington residence. JF testified that he is currently living on the goodwill of his friends and family and he intends to move into the rental unit as soon as possible – hopefully before the birth of his child.
8. The Landlord acknowledged that he did file a previous L2/N12 application in January as file number: LTB-L-016402-22 however, the N12 notice was deemed to be improperly served and the matter was dismissed.
9. The Tenant states that the Landlord's application is brought in bad faith because when the tenancy was commenced, the Landlord had told the Tenant that he had "no intention of moving to this side of the bridge". The Landlord was also aware that the Tenant could not afford to pay rent unless she had a roommate. The Tenant states that because of a disagreement with the Landlord, the roommate vacated the rental unit in or about March, 2022. The Tenant alleges that the roommate vacated because he was fearful of the Landlord but provided no evidence to substantiate this allegation.
10. The Tenant testified that she has never missed or been late with rent payments and she doesn't believe the Landlord will move into the rental unit. When asked if she had any evidence to provide to support her position, the Tenant stated she did not.
11. The Landlord's Legal Representative submits that the application has been brought in good faith and that the Landlord's genuine intention is to live in the rental unit with his partner and soon to be born child. The Landlord requests that the termination of the tenancy be as soon as possible and asks for a standard order.
12. The Tenant's position is that she is also under great financial strain but believes the Landlord is not acting in good faith and seeks at least 10 months to vacate if the Landlord's application is granted.

13. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement pursuant to section 48(1) of 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) a landlord;
- (b) the landlord’s spouse;
- (c) a child or parent of the landlord or the landlord’s spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile Home Park or land lease community in which the rental unit is located.

14. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that they genuinely intend to move into the rental unit.

15. The courts have provided much guidance to the Board in interpreting the “good faith” and “genuine intent” requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.

16. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

“...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal”.

17. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord’s professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

18. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

19. In this case, the Landlord JH testified that he and his partner have sold their condominium and wish to live in the rental unit for at least a one year period as it is more manageable for them and would be better for their family.
20. Based on the evidence and submissions before me, I am satisfied that there is a genuine intention for the Landlord to move into the rental unit after the Tenant vacates the unit. While the Tenant offered reasonable suspicions, which are genuinely held by her, they remain mere suspicions. I am not satisfied that they are sufficient to cast doubt on the Landlord's intentions. The Landlord provided a declaration as required by the *Act* and the Landlord testified at the hearing regarding his intentions. I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord in requires possession of the rental unit in good faith for their own residential occupation and that they genuinely intend to reside in the unit for at least one year.
21. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for their own purpose of residential occupation for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to deny the Landlord's application for eviction. For the following reasons, I find that it would be appropriate to evoke discretionary relief pursuant to section 83 of the *Act*.
22. The Tenant moved into the rental unit in January, 2020. The Tenant states that she is experiencing financial difficulty, but is still able to make ends meet and pay the rent on time

however, the Tenant acknowledged that she does require a roommate as her savings have now been depleted. The Tenant is employed as a hairdresser and states she must stay in Grimsby due to her occupation however, despite her efforts, she cannot find suitable accommodation within her budget.

23. I have considered both parties' position, including the length of this tenancy, the Tenant's and the Landlord's financial and personal situation and while I recognize that the Tenant may experience some difficulties in locating alternative housing, the Landlord has the right to evict a Tenant for Landlord's own use so long as the Landlord genuinely requires the unit for the purpose of residential occupation which I have found. While the Landlord's current living situation is perhaps not ideal, they do have somewhere to live and thus I find it would not be unfair to delay eviction. I find that a short delay of eviction is appropriate, given the circumstances.

24. After considering all of the disclosed circumstances of both of the parties, in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find that it would not be unfair to postpone the eviction until July 21, 2023 pursuant to subsection 83(1)(b) of the *Act* as this additional time will assist the Tenant in locating new accommodations.

25. This order contains all of the reasons within it and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 21, 2023.
2. If the unit is not vacated on or before July 21, 2023, then starting July 22, 2023, the Landlord 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 Landlord on or after July 22, 2023.
4. The Tenant shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting June 16, 2023 until the date the Tenant moves out of the unit.

June 30, 2023

Date Issued

Heather Chapple

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.

File Number: LTB-L-014460-23

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on January 22, 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.

2023 ONL TB 47614 (CanLII)