



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

Citation: Greg Pelenyi v Virginia Donnelly, 2023 ONLTB 46422

Date: 2023-06-29

File Number: LTB-L-004408-23

In the matter of: MAIN FLOOR, 785 WOODBINE AVE
TORONTO ON M4E2J5

Between: Greg Pelenyi Landlord

And

Virginia Donnelly Tenant

Greg Pelenyi (the 'Landlord') applied for an order to terminate the tenancy and evict Virginia Donnelly (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 12, 2023.

The Landlord, the Landlord's Legal Representative, Roz Bianchi, and the Tenant attended the hearing. The Landlord's daughter, Angelica Pelenyi, testified at the hearing.

Determinations:

1. On November 3, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on November 8, 2022, with the termination date of January 31, 2023. The Landlord

claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child.

2. Based on the evidence before me, I find that the Landlord in good faith requires possession of the rental unit for the purpose of the Landlord's daughter's residential occupation for a period of at least one year. Therefore, I am terminating the tenancy but find that it would not be unfair to postpone the eviction until September 30, 2023.
3. The Landlord has compensated the Tenant an amount equal to one month's rent by January 31, 2023.
4. Based on the Monthly rent, the daily compensation is \$32.39. This amount is calculated as follows: \$985.12 x 12, divided by 365 days.
5. There was no dispute that the Landlord collected a rent deposit of \$900.00 from the Tenant at the end of August 2016. This deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$97.56 is owing to the Tenant for the period from August 31, 2016, to August 31, 2023.
6. 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.

Good faith

7. The N12 notice was served under section 48(1)(c) 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,

(c) a child or parent of the landlord or the landlord's spouse; or

8. The onus is on the Landlords to establish that they, in good faith, require the rental unit for the purpose of residential occupation.
9. The relevant case law is clear that the test of good faith is a "genuine intention" to occupy the rental unit and not the reasonableness of the landlord's actions, *Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.). Also, as per the subsequent decision, *Salter v. Belijinac 2001 CanLII 30231 (ONSC DC)*, this legal test remains unchanged, and the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit.
10. Case law also states while the good faith of the Landlord remains the test to be applied, the Board can also draw inferences about the Landlord's good faith from the Landlord's conduct and motives, *Fava v. Harrison 2014 ONSC 3352 (ONSC DC)*.
11. With this application, the Landlord had filed two signed declarations from his daughters, Stephanie and Angelica Pelenyi, each stating that they required the rental unit for

residential occupation for the period of at least one year. However, at the hearing, the Landlord advised that Stephanie has since moved to the United States to start her medical residency and would no longer require the rental unit for residential occupation.

12. The Landlord's daughter, Angelica, testified at the hearing. She stated that she intends to reside in the rental unit for a period of at least one year. She currently resides with her dad in Stouffville and commutes to Toronto for school (full-time) and for work on occasion. She stated that living in Toronto would allow her to use the TTC for her commute and could lead to a better job. She also stated that her boyfriend resides in Toronto.
13. The Tenant disputes the Landlord's good faith. The Tenant submitted that the rental unit on the top floor of the residential complex was vacant just prior to her receiving the N12 notice. She stated that the Landlord advised her via text that his daughter has issues with stairs which the Tenant interpreted that to be the issue why the Landlord's daughter didn't move into the vacant unit at that time. The Tenant then discovered that it was the Landlord's daughter, Angelica, who had acted as the Landlord's agent in showing the vacant rental unit to prospective tenants. The Tenant questioned why the Landlord had made this statement about his daughter if she was able to climb the stairs to show the unit.
14. The Tenant also questioned the Landlord's motives in this application, she stated that Landlord has complained for several years about the smell in her rental unit due to her cats. She also stated that since receiving the N12 notice she has received two N5 notices of termination regarding the complaints about this alleged odour. She also believed that the Landlord had previously contacted animal services regarding her unit.

Analysis

15. As per the relevant case law stated above, the issue I must determine is genuine intention of the Landlord's daughter to occupy this unit not the reasonableness of the Landlord's actions. In this, based on the testimony of the Landlord and his daughter, I am satisfied that Angelica has a genuine intent to reside in the rental unit for a period of at least one year.
16. While it may seem more reasonable to the Tenant that the Landlord's daughter should have moved into the vacant unit at the complex last year, that is not the central issue before me. I must consider the Landlord's daughter's genuine intent to occupy this rental unit now.
17. While the Tenant believes that the Landlord's motivation for this application was due to an alleged odour in her unit, this is insufficient to reasonably result inference that Angelica will not likely move into the rental unit after the Tenants vacates. The Tenant relied on text messages from September 2022 between the Landlord and herself, in those texts the Landlord acknowledged that the smell tends to diminish after he mentions it to the Tenant. The Tenant also stated that the Landlord has made various complaints over several years

regarding this but only served N5 notices recently. I find it more likely than not that this issue has been and is being addressed separately by the Landlord.

18. There was no dispute that the circumstances in this matter changed between the time the N12 notice of termination was served and the hearing date. One of the Landlord's daughter's, Stephanie, has moved on and his other daughter, Angelica, had to decide to reside in the rental unit on her own. Regardless of this change in circumstances, I am satisfied that Angelica has a genuine intent to reside in the rental unit for a period of at least one year, and that is sufficient to satisfy the test in section 48(1) of the Act.
19. Therefore, based on all the evidence presented at the hearing, I am satisfied on a balance of probabilities that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation by his daughter for a period of at least one year.

Relief from Eviction

20. Subsection 83(3)(a) of the Act provides:

Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

21. The Tenant stated that there are a lot of maintenance issues in the rental unit; the kitchen ceiling is damaged (due to a prior water leak from above), mold, the stove and the shower don't work. She also submitted that because of the Landlord's behaviour in 2017 she never notified him of these things until their discussions about the N12 notice.
22. There was no dispute that the Tenant notified that Landlord of the above issues via text message at the time the Landlord advised his daughters plan to move into the rental unit. There was also no dispute that the Landlord was denied access by the Tenant to the rental unit to inspect and/or effect repair of these issues. The Tenant maintained that the Landlord can only enter with a police escort due to an incident in 2017. However, the Tenant did not contact the police when the Landlord gave notice to enter or attempted to enter.
23. The evidence before me was insufficient to find that the Landlord is in **serious breach** of his obligations under the Act. The Tenant also did not provide any photos of the alleged disrepair. Also, the Tenant has denied the Landlord access to the rental unit to assess and/or effect repair of the alleged maintenance issues, thus denying the Landlord the opportunity to make any repairs before the hearing. Therefore, section 83(1)(b) does not apply here. The Tenant is entitled to raise these issues and seek a remedy by filing her own application at the Board.

24. 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.
25. The Tenant requested until the end of September to vacate the rental unit. The Landlord did not oppose extending the termination date for the Tenant.

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 September 30, 2023.
2. 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.
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 October 1, 2023.
4. The Tenant shall pay the Landlord compensation of \$32.39 per day for the use of the unit starting June 13, 2023, until the date the Tenant moves out of the unit.
5. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$997.56.
6. However, the Landlord is authorized to deduct from amount owing to the Tenant \$32.39 per day for compensation for the use of the unit starting June 13, 2023, to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 29, 2023

Date Issued

Lisa Del Vecchio

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 April 1, 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.