



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

Citation: Alfarano v Andres, 2023 ONLTB 46896

Date: 2023-06-27

File Number: LTB-L-049808-22

In the matter of: 2, 358.5 CARLTON ST ST
CATHARINES ON L2M4W5

Between: Michael R Alfarano Landlord
Wathna Victoria Alfarano

And

Gregory A Andres Tenant

Michael R Alfarano(MA) and Wathna Victoria Alfarano(WA) (the 'Landlord') applied for an order to terminate the tenancy and evict Gregory A Andres (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.

This application was heard by videoconference on April 3, 2023.

The Landlords (MA) and (WA), the Tenant, and the Tenant's representative Lisa Ridsill attended the hearing.

Determinations:

1. On August 30, 2022, the Landlord gave the Tenant an N12 notice to terminate the tenancy on October 31, 2022. The N12 notice was served under section 48(1) of the Residential Tenancies Act, 2006 ("Act"). The N12 claims that the Landlord requires vacant possession of the rental unit for the purpose of residential occupation for a period of at least one year.
2. The Landlord paid the Tenant a compensation equivalent to one month's rent by the termination date of October 31, 2022, as set out in the N12 notice.
3. The Landlord filed a Declaration dated September 06, 2022. It states that the Landlord in good faith personally requires the basement rental unit for a period of at least one year.

Good Faith

4. The issue to be determined is whether the Landlord requires the unit in good faith.
5. MA testified that he and his wife had been having marital issues and decided to go their separate ways when they had a major argument during their daughter's birthday party on May 11, 2022. MA explained that he and his wife agreed it would be best to move into the rental unit and allow his spouse and their two children, aged 4 and 2, to stay in their current residential unit.
6. MA testified that he currently lives in the unfinished basement of the family residential unit, waiting to move into the rental unit just after the Tenant moves out. Landlord WA confirmed their separation after a blowout during their 4-year-old daughter's birthday party and revealed that their living condition had been difficult since they resided in the same unit although separated, and their children had to witness their constant fights.
7. The Tenant claims he is unfairly targeted by the Landlord since there are three other units, and none of these Tenants were not given an N12 notice. The Tenant also claims that the other units have two bedrooms with more prominent space for the Landlord and his two children whenever they visit him. The Tenant claims inconsistencies in MA and WA narratives of what caused their break-up in marriage or when they decided to separate.
8. Subsection 48(1) permits a landlord to 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. Guideline 12 of the LTB Interpretation Guidelines is informative on this issue. Consistent with case law, the Guideline explains that "good faith" means that I must decide that the Landlord has a genuine intention to occupy the premises.
9. The Landlord bears the obligation to prove the good faith requirement but is only required to establish that she genuinely intends to live in the rental unit for at least one year. The Landlord's motives are only relevant as evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists [Fava v. Harrison, [2014] O.J. No. 2678 (Div. Ct); Salter v. Beljinac, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)].
10. Based on the evidence, I have no reason to doubt the truthfulness of the Landlord's testimony or her good faith intentions to occupy the unit for at least one year. I did not permit the Landlords to participate in the hearing together. Instead, I separated them to ensure that their testimony was independent. The Landlords' testimony was substantially clear and consistent. This contributed to their credibility. Also, there was no evidence of a previous attempt to evict the Tenant or any evidence to sell or re-rent the rental unit.
11. Also, the Tenant claims a display of bad faith intention by the Landlord because the Landlord only gave him an N12 notice to vacate his one-bedroom unit, while the three other units with more rooms were not given an N12 notice. I do not accept the Tenant's position since the Landlord's alternative living arrangements do not necessarily indicate a lack of intention to occupy the rental unit.

12. Pursuant to Interpretation Guideline 12, the fact that the Landlord might choose the particular unit to occupy does not result in failing to meet the s.48(1) standard. I am therefore satisfied on a balance of probabilities that the Landlord, in good faith, requires possession of the rental unit for residential occupation for a minimum of one year.

Relief from eviction

13. The Tenant requests relief from eviction. He has lived on this property since July 2014 and receives \$1,400.00 monthly from the Ontario Disability Assistance Program. The Tenant is searching for a new rental unit, but all the available options are too expensive, costing around \$1,500.00 monthly. Unfortunately, he has no support from individuals or organizations to help him find a new place to live.
14. Further, the Tenant testified that he suffers from chronic kidney disease, immunocompromised state, and obsessive-compulsive disorder and his health could be affected if evicted from this rental unit. The Tenant submitted to the Board as evidence, Dr. Anthony Broski's ambulatory care report dated February 24, 2023, which confirms that he suffers from the abovementioned physical and mental diagnoses.
15. The Landlord requests a standard eviction order due to ongoing differences between him and his wife, creating an unhealthy environment for their children.
16. 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.
17. While I am sympathetic with respect to the Landlord's personal circumstances, particularly with respect to his children, I find that it would not be unfair to postpone the eviction until August 31, 2023, pursuant to section 83(1)(b) of the Act to allow the Tenant additional time to find alternative accommodation.

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 August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 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 September 1, 2023.
4. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 27, 2023

Date Issued

Percy Laryea

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 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.