



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

Citation: Kavitha Mariam Koshy v Christine Marie Bourne (LaChapelle), 2023 ONLTB 46139

Date: 2023-06-27

File Number: LTB-L-010744-23

In the matter of: 141 Crow St. Welland
ON L3B5N8

Between: Kavitha Mariam Koshy Landlord

And

Christine Marie Bourne (LaChapelle) Tenant
Kevin William Joseph LaChapelle

Kavitha Mariam Koshy (the 'Landlord') applied for an order to terminate the tenancy and evict Christine Marie Bourne (LaChapelle) and Kevin William Joseph LaChapelle (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 Deanne Seguin and the Tenant Christine Marie Bourne (LaChappelle) attended the hearing on her own behalf and on behalf of the Tenant Kevin William Joseph LaChapelle.

Determinations:

Preliminary Issues:

1. The Tenant requested an adjournment of this matter as she stated she has been ill all week with COVID and had been up with a fever the night prior. The Tenant stated that to proceed today would be difficult.
2. The Tenant also indicated that she called Legal Aid last week and has not had an opportunity to seek legal advice.
3. The Landlord's Legal Representative opposed the adjournment request stating that the Tenant did not contact them and the Tenant has no evidence regarding actually having COVID. The Landlord's Legal Representative and the Landlord have also reached out to the Tenant to have discussions but the Tenant has not responded and they believe this request is a delay tactic.
4. It was submitted by the Tenant that the Tenant Kevin William Joseph LaChappelle was home but was looking after an elderly and blind parent.
5. Having considered the reason for the adjournment request, the position of the parties, the issues in the application, the history of the proceeding and any prejudice that may result from granting or denying the request, the adjournment was denied.
6. The matter was stood down at 9:32 a.m. so that the Tenant would have an opportunity to speak to Tenant Duty Counsel and further prepare for this matter to be heard later in the day.
7. At 12:55 p.m., I called this matter and the Tenant confirmed she had spoken to Tenant Duty Counsel and was ready to proceed. After speaking to Tenant Duty Counsel, the Tenant submitted a further preliminary issue regarding the N12 notice of termination ('N12 notice') being invalid as the postal code is incorrect on the N12 notice.
8. The Landlord's Legal Representative submits that the postal code on the N12 notice is exactly as it is stated on the lease agreement and that the Tenant acknowledged, despite having an allegedly incorrect postal code, that she still received it.
9. I find that the Tenant has failed to prove, on a balance of probabilities, that the N12 notice is invalid due to an incorrect postal code. The Tenant did not allege that the N12 notice had gone astray, or that she had not received it because of the incorrect postal code. Consequently, I find that the N12 notice was in substantial compliance with the requirements of the *Residential Tenancies Act, 2006* (the 'Act').

The L2 Application:

10. For the reasons that follow, I find that 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. Therefore, the tenancy is terminated effective August 31, 2023.
11. On January 10, 2023, the Landlord served the Tenant with an N12 notice of termination seeking termination of the tenancy for the purpose of residential occupation by the Landlord. The termination date set out in the N11 notice is March 30, 2023.

12. The Landlord paid the Tenant compensation equal to one month's rent via cheque #086 dated January 10, 2023.
13. 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 her on January 10, 2023 stating that she personally requires the rental unit certifying that she in good faith requires the rental unit for their own personal use for a period of at least one year.
14. The N12 notice is served pursuant to subsection 48 of the Act. Section 48(1) of the Act requires that in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 notice, the Landlord required, in good faith, the rental unit for residential use.
15. The Landlord states that her father has been handling all aspects of this rental unit and the Landlord currently lives with her parents. The Landlord stated that this is her only rental property and it's time for her move into her own home where she can also have her business needs met. The Landlord stated that the only time she has not lived with her parents is while she was attending university and that she would like to gain independence and reside in her own home.
16. The Tenants submit that they moved into the rental unit in April, 2020 and that they were told the property had been purchased by the Landlord for investment purposes. The Tenants submit that the Landlord served the N12 notice in bad faith for a number of reasons including:
 - The Landlord's father (property manager) attempted to have the Tenants sign a new lease and pay increased rent however, the Tenants refused as they were not provided with proper notice for a rent increase and there was a current "freeze" on rent increases due to the pandemic;
 - The Landlord was evasive with respect to the disclosure of their address. The Tenant's rent cheques would at times be late because cheques would not be received as unbeknownst to the Tenants, the Landlord had moved and failed to provide the new address;
 - The Landlord's father (property manager) contacted the Tenants in August, 2022 to inquire as to how much more the Tenants could afford to pay towards rent and that if the Tenants moved, they would have to pay a higher amount for rent. Upon requesting proper paperwork from the Landlord, the Landlord's father indicated that he had no time to prepare further paperwork;
 - The Landlord and her father have been observed watching the Tenants over the past few months and were also observed sitting in their car waiting for the Tenant's guests to leave prior to them approaching the rental unit to speak with the Tenants;

- The Landlord's father has been "coaching" the Landlord and therefore the Tenants do not believe the Landlord genuinely intends to reside in the rental unit.

17. When asked if the Tenant had any reason why the Landlord's application was not made in good faith, the Tenant stated that they believe the Landlord and her father are a team and he would not make any moves without keeping his daughter, the Landlord, apprised. The Landlord has not been truthful to the Tenant regarding the provision of her address and that the Landlord has attempted rent increases previously without going through the proper process. The Tenants also submit that because the Landlord and her father are realtors, they are both aware of how much money is to be made with rental properties and they are aware of a "loophole" where that they can tell the Board they are moving into the rental unit in order to evict tenants.
18. The Tenant acknowledged that her belief that the Landlord did not serve the N12 notice in good faith is based on suspicion but it is based on the Landlord's past behaviour and the dishonesty of the Landlord's father.
19. 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.
20. 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".

21. 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.

22. 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.”

23. I am not persuaded by the Tenants' position. While the Tenants offered reasonable suspicions, which are genuinely held by them, 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 regarding her intentions. I have no reason to doubt the truthfulness of the Landlord's testimony or her good faith intentions.
24. I am also not satisfied, on a balance of probabilities, that there is a connection between the issues in the past with a new lease being attempted to be entered into and an increase in rent as well as the other issues the Tenants have identified and the notice of termination which was served on January 10, 2023. Some of the issues happened years ago and were involving the Landlord's father, albeit as the Landlord's property manager. I accept the Landlord's explanations and am satisfied that these prior disputes and issues do not establish a link to this notice of termination. I am not satisfied that the Landlord served the notice of termination in retaliation for any actions the Tenants may have taken regarding the various issues that may have existed.
25. The caselaw clearly establishes that the test of *bona fides* is determined by considering the intention of the person named in the application. If that person intends to reside in the unit then the notice is given in good faith. The Tenants were not aware of any reason why the Landlord would not reside in the unit. The Landlord testified that she requires the rental unit for her own residential occupation and I am satisfied that she genuinely intends to move into the rental unit.
26. Based on the evidence and submissions before me, and on a balance of probabilities, I find that the Landlord has a genuine intent to occupy the property for the purpose of residential occupation for at least one year.

Discretionary Relief from Eviction

27. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for the 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*.
28. The Tenants submit that she lost her job in February, 2023, her mother also passed away, and that her father is now living with them since February, 2023. The Tenant stated that her 86 year old father is blind, has health care personnel attend the home on a daily basis, is receiving physiotherapy weekly, has other appointments that they are trying to juggle and has not been able to find employment. The Tenant Kevin William Joseph LaChapelle is employed full-time. The Tenant seeks an additional 6-12 months to vacate the rental unit due to the current housing market.
29. The Landlord submits that at no time did the Tenants contact her to ask for additional time due to their situation and the Tenants have had notice of the Landlord's intentions to move into the rental unit since December, 2022 when she served a first N12 notice, albeit with improper service. The Landlord's Legal Representative requested a standard order but at the very latest requested a termination date at the end of July, 2023.
30. I have considered both parties' position, including the length of this tenancy, the Tenants' needs and the Tenants' submission that they anticipate difficulties in locating alternative accommodations to suit her father's needs and the issues the Tenants submitted at the hearing. While I recognize that the Tenants may experience some difficulties in locating alternative housing, I have found that the Landlord genuinely requires the unit for the purpose of residential occupation. While the Landlord's current living situation may not be ideal for her, she does have somewhere to live and thus I find it would not be unfair to delay eviction. I find that a delay of eviction is appropriate, given the circumstances.
31. 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 August 31, 2023 pursuant to subsection 83(1)(b) of the *Act* as this additional time will assist the Tenant in locating new accommodations.
32. 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 Tenants is terminated. The Tenants 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 Tenants shall also pay the Landlord compensation of \$75.62 per day for the use of the unit starting September 1, 2023 until the date the Tenant moves out of the unit.

June 27, 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.

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