



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

Citation: Vijay Bhaskar v Muhammad Waseem Rafiq, 2023 ONLTB 46647

Date: 2023-06-26

File Number: LTB-L-066953-22

In the matter of: 25 BECKENHAM RD
BRAMPTON ON L6P2L8

Between: Vijay Bhaskar Landlord

And

Muhammad Waseem Rafiq Tenant

Vijay Bhaskar (the 'Landlord') applied for an order to terminate the tenancy and evict Muhammad Waseem Rafiq (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 May 1, 2023.

The Landlord, Landlord's representative Jayant Unny, and the Tenant attended the hearing.

Determinations:

1. By way of background, the residential unit is a house, and the tenancy commenced on September 01, 2011.
2. The Tenant still resides in this rental unit and the monthly lawful rent is \$2,400.00.
3. On October 31, 2022, the Landlord gave the Tenant an N12 notice to terminate the tenancy on December 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.

Compensation:

4. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under section 48(1)".
5. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the Tenant no later than the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is December 31, 2022.

6. On December 27, 2022, the Landlord hand delivered and to the Tenant a cheque payment of \$2,400.00, when the Landlord slid it under the Tenant door, which is equal to one month's rent. The Tenant returned the compensation to the Landlord the same day.
7. The Landlord testified that he gave the Tenant a cheque for \$2,400.00, equivalent to one month's rent, on December 27, 2022. The Landlord slid the cheque under the Tenant's door and sent a text message at 12:58 pm on the same day to explain why the cheque was given.
8. The Tenant testified that he threw the cheque away because he found the cheque in the garbage, and the Landlord did not advise him of the purpose of the cheque. The Tenant asserts that he received no text messages from the Landlord concerning the compensation cheque of \$2,400.00.
9. I am satisfied based on the evidence that the Landlord paid the Tenant compensation equal to one month's rent on December 27, 2022, via hand delivery, and thus satisfied sections 84.1 and 55.1 of the Act. While the Tenant asserts that he discarded the cheque payment because he did not know why it was issued to him, the evidence shows that the Landlord sent a text message to the Tenant on December 27, 2022, at 12:58 pm, providing the reason the Landlord delivered the cheque of \$2,400.00 compensation to the Tenant. Thus, the fact that the Tenant chose to decline and discard the Landlord's compensation cheque payment cannot reasonably result in a finding that the Landlord failed to provide the payment. However, as the cheque payment was not reissued after the Tenant discarded it, I will order that it be paid by the Landlord

Good Faith:

10. The only remaining issue to be determined is whether the Landlord requires the unit in good faith.
11. 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.
12. 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.)].
13. The Landlord testified that he resides in Caledon, Ontario, and his children attend school in Brampton at the intersection of Chinguacousy and Bramalea. The Landlord explained that he wants to relocate to this rental unit in dispute so that the children can take the transit to school.
14. The Tenants disputed that the Landlord requires the rental unit in good faith. This is because the Landlord has demonstrated a pattern of behaviour of terminating the tenancy for the purpose of residential occupation and believes that the Landlord is trying to kick him

out of the unit to re-rent the unit for more money. Further, the Landlord had another unit they could occupy.

15. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Landlord genuinely intends to move into the rental unit and therefore in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year. I do not accept the Tenant's claim that Landlord has other units available and that he has re-rented them rather than moving in indicates bad faith. Whether or not the Landlord had other options for residential occupation is not determinative of genuine intent to occupy the rental unit.

Relief from eviction

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 15, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant testified that he has been residing in the rental unit with his wife and four children aged 13, 12, 4, and 2 years since September 2011.
18. The Landlord sought for an order that will postpone the eviction to August 15, 2023.
19. Overall, delaying the eviction until August 15, 2023, under subsection 83(1)(b), would provide the Tenant with sufficient time to locate a new rental unit.

It is ordered that:

1. The Landlord shall pay the Tenant \$2,400.00 compensation on or before July 15, 2023.
2. If the Landlord fails to pay to the Tenant \$2,400.00 compensation on or before July 15, 2023, the tenancy between the Landlord and the Tenant continues.
3. If the Landlord complies with paragraph one above, the tenancy between the Landlord and the Tenant is terminated and the Tenant must move out of the rental unit on or before August 15, 2023.
4. If the unit is not vacated on or before July 15, 2023, then starting July 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. The Tenant shall also pay the Landlord compensation of \$78.90 per day for the use of the unit starting July 16, 2023, until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application
7. 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 August 16, 2023.
8. If the Tenant does not pay the Landlord the full amount owing on or before August 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 16, 2023 at 6.00% annually on the balance outstanding.

June 26, 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.

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