



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

Citation: Sonny Trieu v Nicole Victoria Marshall, 2023 ONLTB 46176

Date: 2023-06-23

File Number: LTB-L-035809-22

In the matter of: 17 FRONTIER PTWAY
SCARBOROUGH ON M1B4G6

Between: Sonny Trieu Landlord

And

Nicole Victoria Marshall Tenant

Sonny Trieu (the 'Landlord') applied for an order to terminate the tenancy and evict Nicole Victoria Marshall (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 May 30, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

Landlord's Own Use

3. On May 1, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.

4. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022. On June 30, 2022, the Landlord sent correspondence to the Tenant advising that June 2022 rent was compensated. June 2022 rent was not paid.
5. The Landlord filed a declaration dated July 20, 2022 from the Landlord. Pursuant to section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'), the Landlord was required to file an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal

File Number: LTB-L-035809-22

use for a period of at least one year. The Landlord's declaration did not contain this information. However, pursuant to *Sertic v. Mergarten*,¹ where an affidavit is vague, *viva voce* evidence of the affiant can be used to supplement the affidavit. As such, I heard evidence from the Landlord regarding his good faith intent.

6. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year. The Landlord testified that he got married this past April. In May 2022, he got engaged and him and his fiancé decided to move into the rental unit. He was living in a small two-bedroom condominium and wants more space for his family and eventually having a child. The Landlord testified he will live in the rental unit full-time and for years as they intend to have their child grow up in the unit.
7. The Tenant testified that she was unsure if the Landlord was going to live in the house and had no evidence to dispute his good faith intent.
8. The Landlord bears the obligation to prove the good faith requirement and is required to establish that the person purporting to live there genuinely intends to live in the rental unit for at least one year [*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.)].
9. Based on the uncontested evidence of the Landlord, I am satisfied that he genuinely intends to live in the rental unit for at least one year. The Landlord's consistent testimony was that he requires the rental unit for him and his growing family.

Relief from eviction

10. 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.
11. The Tenant testified that she is a single mom with three children and has resided in the unit since 2017. Her children are aged 18, 16, and 11. Her income is unstable due to issues with the Child Tax Benefit. She requested relief as she is looking for resources to pay rent

and to be able to find affordable housing. The Landlord requested a standard order as he needs to provide for his family.

12. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy to August 31, 2023. This period will provide the Tenant some time to organize her move.

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.

¹ 2017 ONSC 263 (CanLII).

File Number: LTB-L-035809-22

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.

June 23, 2023

Date Issued

Camille Tancioco

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.