



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

Citation: Katherine Manherz v Amanda Essauce, 2023 ONLTB 45331

Date: 2023-06-23

File Number: LTB-L-011500-23

In the matter of: Unit #3, 73 CAMBRIDGE AVE TORONTO
ON M4K2L2

Between: Katherine Manherz Landlord

And

Amanda Essauce Tenant

Katherine Manherz (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Essauce (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 Katherine Manherz and the Tenant Amanda Essauce 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 effective August 15, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 25, 2023, the Landlord served the Tenant an N12 notice of termination with the termination date of March 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.

4. The Landlord has compensated the Tenant an amount equal to one month's rent by March 31, 2023.

Good Faith

5. Section 48 of the Act has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (Feeney v. Noble, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.). Neither the reasonableness of the landlord's intention, nor the fact that the landlord may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (Salter v. Beljinac, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and Feeney v. Noble). However, the surrounding circumstances may provide circumstantial 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.))
6. The Landlord testified the Tenant moved into the rental unit on September 1, 2015 with her daughter. In August of 2018, the Landlord served the Tenant an N12 notice so that her son, Tevin Manherz-Dennis could move into the unit. The Landlord stated this was withdrawn as her son's plans changed. The Tenant's evidence was the Board heard an application concerning this N12 and issued an order for eviction. The Tenant agreed the eviction was not enforced due to the change in circumstances of the Landlord's son and she remained in the rental unit.
7. The Landlord's evidence was her son now manages the property and she would like the rental unit for her son to reside in. She emailed the Tenant on July 15, 2023 to let them know her intentions.
8. The Landlord's son, Tevin Manherz-Dennis, testified that he intends to move into the rental unit with his partner and start a family. His evidence was he currently manages the property and performs maintenance tasks to the other units. Mr. Manherz-Dennis testified he is at the residential complex frequently as the other units need a lot of work. His evidence was living in the rental unit would make his job much easier. Mr. Manherz-Dennis testified he intends to reside in the rental unit for at least two years while he saves money to buy a house.
9. The Tenant testified that she believed it would be a lucrative option for the Landlord to evict her and increase the rent for the rental unit. She based this on her knowledge of the rental market obtained while looking for another place to live. She was also skeptical since the Landlord obtained an eviction order in 2018 for her son and he did not move into the rental unit at that time.

10. The Landlord and her son both gave unchallenged evidence in a clear and straight forward manner. The intentions of the Landlord's son are reasonable and plausible. Nothing in their evidence gave me any reason to doubt the genuine intention of the Landlord or her son.
11. I do not find a successful application in 2018 for the same reason suggests bad faith on the part of the Landlord. I say this because once the Landlord learned her son's plans had changed, she did not enforce the eviction and the Tenant remained in the rental unit. The Landlord acted appropriately in the circumstances. Additionally, I do not find an application almost five years before this L2 application supports a finding of bad faith on the part of the Landlord. The time period between the applications is significant and I do not find they are related.
12. While the Tenant may believe it would be a lucrative option for the Landlord to evict her and increase the rent for the rental unit, no evidence was presented suggesting this is the intention of the Landlord.
13. On the evidence presented at the hearing, I am satisfied on a balance of probabilities the Landlord's son genuinely intends to live in the rental unit for a period of at least one year. As a result, I find the N12 notice of termination was served in good faith.

Daily Compensation

14. The Tenant was required to pay the Landlord \$3,612.00 in daily compensation for use and occupation of the rental unit for the period from April 1, 2023 to June 12, 2023. The parties agreed the monthly rent has been paid for this time period and there are no arrears of rent for the period ending June 30, 2023.
15. Based on the monthly rent, the daily compensation is \$49.48. This amount is calculated as follows: \$1,505.00 x 12, divided by 365 days.
16. The Landlord collected a rent deposit of \$1,350.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$91.48 is owing to the Tenant for the period from October 1, 2018 to June 12, 2023.
17. 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.

Section 83 Considerations

18. The Landlord sought termination of the tenancy on June 30, 2023. The Landlord cited the time period the Tenant has already had to find other accommodations. At the hearing, the Landlord did suggest they would agree to a termination date of July 31, 2023.

19. The Tenant's evidence was that she wanted to move and has spent the last two months looking for a new home. She has saved money to put toward first and last month's rent. Her evidence was she has had a difficult time finding something suitable for herself and her daughter. The Tenant stated she was surprised she had not found another place to live by the date of the hearing.
20. The Tenant testified that she recently learned her mother has cancer and the emotional impact of this has affected her ability to find a new home. The Tenant requested until September 30, 2023 to vacate the rental unit.
21. I asked the Tenant if there were any other circumstances she was experiencing that would make an eviction unfair and she responded that there was nothing she was interested in discussing. I asked the Tenant if there were any health issues that I should be aware of and again the Tenant responded by stating there was nothing she wanted to discuss. I took this to mean there may be issues the Tenant was experiencing but that she was not interested in divulging the information at the hearing. No request was made by the Tenant to close the hearing so that she could provide the Board additional information.
22. 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. I am mindful the Tenant has had over four months since the N12 notice was served to find new living accommodations. However, this is a no-fault eviction and the Tenant has resided in the rental unit for almost eight years with her daughter. She has been diligent in trying to find a new home while dealing with the difficult news about her mother. The additional time recognizes the current rental market, the length of the tenancy, that a child will be relocated and the emotional impact a cancer diagnosis to one's parent will have on a person. The termination date of August 15, 2023 is meant to provide the Tenant an opportunity to find a suitable home for her and her daughter before the start of the next school year.

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 15, 2023.
2. If the unit is not vacated on or before August 15, 2023, then starting August 16, 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 August 16, 2023.
4. 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 \$(1,441.48).

5. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$49.48 per day for compensation for the use of the unit starting July 1, 2023 to the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 23, 2023

Date Issued

John Cashmore

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 16, 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.