



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

Citation: Robert Devries v Paul Henderson, 2023 ONLTB 43582

Date: 2023-06-14

File Number: LTB-L-076595-22

In the matter of: 266 ELM ST
ST THOMAS ON N5R1J5

Between: Eleanor Devries Landlords
Robert Devries

And

Paul Henderson Tenant

Eleanor Devries, and Robert Devries (the 'Landlords') applied for an order to terminate the tenancy and evict Paul Henderson (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 30, 2023.

The Landlords, the Landlord's Representative, Olga Humphreys, the Tenant and the Tenant's Representative, Susana Pereira, attended the hearing. The Purchasers, Cindy Baker and Kyra Baker, were also present at the hearing.

Determinations:

1. On November 30, 2022, the Landlords served the Tenant an N12 notice of termination with the termination date of January 31, 2023. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Purchaser.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. The Landlord has proven that:
 - the residential complex contains three or fewer units.
 - the Landlord has entered into an agreement of purchase and sale of the residential complex.
 - the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by January 31, 2023, by issuing a cheque to the Tenant.
5. The Purchasers of the unit, Cindy Baker and Kyra Baker, have submitted declarations with the Landlord's application. Kyra Baker's declaration confirms that she intends to reside in the rental unit for an indefinite amount of time with her child if vacant possession is awarded to her.
6. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy between the parties shall terminate on August 13, 2023.

Evidence

7. Robert Devries (RD) testified that he is 84 years old. The Purchasers are his daughter, Cindy Baker, and his granddaughter, Kyra Baker. RD decided that he would sell his property to his daughter and granddaughter because he and his wife (Eleanor Devries) were no longer physically capable of acting as landlords. Also, the sale of the property was done in part because the daughter and the granddaughter had specific needs and use for the property as a primary residence.
8. Under cross-examination, RD had confirmed that the rental unit was put up for sale in the summer of 2022, however RD pulled the house off of the market when he had determined that he was going to sell the property to his daughter and granddaughter.
9. The property was sold to the Purchasers on December 20, 2022. The Purchasers currently own the rental unit. Under cross-examination, it was determined that the purchase price was for one dollar. Evidence presented by both parties confirmed that Kyra Baker and Cindy Baker are now the owners of the rental unit.
10. Kyra Baker (KB) testified that she intended on living in the rental unit with her 3-year-old son. KB testified that she currently lives in another apartment building in St. Thomas. There is an ongoing issue of cigarette smoke entering KB's current unit. KB also testified that due to health conditions suffered by KB's child, the cigarette smoke directly affects the child's ability to breathe.
11. The rental unit KB now owns is a detached house that does not have any neighbours close enough where second-hand smoke could affect the unit.

12. KB is also seeking to move to the rental unit because it is located closer to both her parents' and grandparents' homes. Living in the rental unit would give KB the opportunity to access any help that her family can provide in raising her child.
13. KB testified that she intends on staying the unit for a very long time, perhaps for life.
14. The Tenant testified that has lived at the rental unit since March 2019. The Tenant stated that until recently, the Tenant and the Landlords have had a good relationship.
15. The Tenant testified that he felt that the N12 was served by the Landlord in retaliation for having the Landlords attend to maintenance issues at the unit, as well as for applying his rights as a Tenant to have guests and occupants stay at the rental unit.
16. The Tenant stated that he has been looking for a new unit but has not been able to find one due to the expense of rental units on the market and the lack of inventory of suitable rental units on the market. The other issue hindering the Tenant's ability to find a new rental unit is that the Tenant owns two dogs, which the Tenant claims acts as a deterrent for landlords to accept his application. The Tenant did not supply any supplementary evidence to support this claim, such as advertisements that he has answered or any records of any landlords denying the Tenant's application based on his dog ownership. However, the Landlords did not challenge this evidence at the hearing.
17. The Tenant also stated that he had recently had knee-replacement surgery, however, at the hearing, he stated that his knee was functioning normally and did not create any need for any accommodation.
18. The Tenant stated that he makes up to \$4,000.00/month. The Tenant was paying \$1,282.88/month for rent. The Tenant has not been able to find anything comparable on the market.
19. The Tenant asked that if the Landlords' application is granted, that the Board give the Tenant 60 to 90 days to move out of the unit.
20. The Purchaser, KB, stated that she would not be opposed to giving the Tenant 60 days to vacate the rental unit.

Analysis

21. Section 49(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

49 (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

- (a) the purchaser;
- (b) the purchaser's spouse;

- (c) a child or parent of the purchaser or the purchaser's spouse;
22. Based on the evidence before me, I am satisfied that the purchase of the property has taken place as of December 20, 2022 and that Cindy and Kyra Baker are the purchasers of the rental unit.
23. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. However, in the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are "largely irrelevant", the Board can consider the conduct and motives of a party to draw inferences as to whether the Landlord, or in this case, the purchaser, desires, in good faith to occupy the property."
24. I find that the only issue brought forward challenging the good faith of the notice was the Tenant's claim that the N12 was served in response to other conflicts that had occurred earlier in 2022. Since no evidence was submitted to support this claim, I am not satisfied that the N12 was filed in retribution for any prior conflicts between the Landlords and the Tenant.
25. I am satisfied, based on the KB's uncontested testimony, that the purchaser, in good faith, genuinely intends to live in the rental unit.

Compensation Post-Termination

26. The Tenant was required to pay the Landlord \$5,056.02 in daily compensation for use and occupation of the rental unit for the period from February 1, 2023 to May 30, 2023.
27. Based on the Monthly rent, the daily compensation is \$42.49. This amount is calculated as follows: \$1,292.33 x 12, divided by 365 days.
28. The Landlord collected a rent deposit of \$1,250.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$58.00 is owing to the Tenant for the period from December 1, 2019 to May 30, 2023 .
29. 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.

Relief From Eviction (section 83)

30. Section 83(1) of the Act states:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

31. At the hearing, the Purchaser stated that she would not oppose a termination date of 60 days from the date of the issuance of the order. The Tenant had stated in his testimony that he would need between 60 to 90 days to vacate the rental unit. The Tenant testified that the lack of rental inventory in the municipality, the increase in rent and the fact that he owns two dogs would prevent the Tenant from being able to vacate the unit any earlier.
32. I find that, based on the evidence before me, that it would be unfair to deny eviction under s. 83. I do find that the Landlords and the Purchasers are acting in good faith. Although the Tenant does have some challenges in finding a new rental unit, I feel that it would not be unfair to grant the Landlord's application.
33. However, I find it would not be unfair to postpone the eviction to allow the Tenant more time to find new accommodations. In consideration of both the Landlords', Purchasers', and Tenant's submissions, I find that a termination date of August 13, 2023, is not unfair.
34. I have considered all of the disclosed circumstances in accordance with section 83(2) of the Act and find that it would not be unfair to postpone the eviction until August 13, 2023, pursuant to section 83(1)(b) of the Act.

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 13, 2023.
2. If the unit is not vacated on or before August 13, 2023, then starting August 14, 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 14, 2023.
4. The Tenant shall pay to the Landlord \$3,748.02 less any rent paid by the Tenant, which represents compensation for the use of the unit from February 1, 2023, to May 30, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$42.49 per day for the use of the unit starting May 31, 2023, until the date the Tenant moves out of the unit.

June 14, 2023
Date Issued

Member, Landlord and Tenant Board

Robert Brown

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 14, 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.