



Order under Section 69
Residential Tenancies Act, 2006

Citation: Lee v Beaucage, 2023 ONLTB 42932

Date: 2023-06-14

File Number: LTB-L-045506-22

In the matter of: BASEMENT UNIT, 1067 DAVENPORT RD TORONTO
ON M6G2C2

Between: Derrick Lee Landlord

And

Lissa Beaucage Tenant

Derrick Lee (the 'Landlord') applied for an order to terminate the tenancy and evict Lissa Beaucage (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.

This application was heard by videoconference on April 3, 2023.

The Landlord and the Landlord's Legal Representative, S. Teal and the Tenant and the Tenant's Legal Representative, O. Dooley attended the hearing.

B. Shew attended as witness for the Landlord.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 15, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of October 31, 2022. 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 themselves.

Good faith requirement

Landlord's evidence

4. The Landlord testified that he entered into an agreement of purchase and sale with Brian Shew, the purchaser. He testified that the agreement includes a vacant possession clause, and the agreement has been amended various times to delay the closing date in order to have the vacant possession clause fulfilled. He testified that a prior N12 was served to the Tenant, however it was defective and was withdrawn.
5. B. Shew testified that he is the purchaser. He testified that he entered into an agreement of purchase and sale with the Landlord. He testified that he will move into the house once the Tenant vacates and he will live there with his family. He testified that he wants to live in that particular neighbourhood as there are good schools close by and it fits his lifestyle. He testified that he currently resides in a 1-bedroom unit that he has outgrown due to his growing family, his baby currently sleeps in his bedroom with his wife and himself. He testified that he owns other properties, however none of those properties fits his needs.
6. B. Shew testified under cross examination that this unit is not an investment property. He testified that although the main floor unit is vacant, he will not consider waiving the vacant possession clause in the agreement. He testified that he is real estate consultant, he does not buy and sell real estate.

Tenant's evidence

7. The Tenant testified that she doesn't think the purchaser is moving into the unit and this belief is based on the fact that the closing date keeps getting pushed back.
8. The Tenant also submitted into evidence a copy of an ad from an online website of an advertisement of the main floor unit for rent. This listing is undated.

Good faith analysis

9. Based on the evidence before me, on a balance of probabilities, I find that the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
10. I do not find that the purchaser's employment is detrimental to his good faith intention of residing in the property, nor do I find that because the APS has been amended to allow for later closing dates, it somehow undermines the purchaser's intention to move into the unit. If anything, it strengthens the proposition that he intends to reside in the unit.
11. I do not find that the listing that was submitted by the Tenant helpful, the Landlord denies that he posted this listing, and it is undated.
12. The Landlord has compensated the Tenant an amount equal to one month's rent by October 31, 2022.

Relief from eviction

13. The Tenant testified that she has lived in the unit for six years. Her source of income is Ontario Disability Support Program benefits. She testified that the neighbourhood she lives in represents her

cultural identity and that she feels comfortable because of that. She testified that she has good relationships with her neighbours and her medical needs are

met in the neighbourhood. The Tenant testified that she is starting an educational program in May and if she had to vacate the unit, she would have to leave the city and potentially would not be able to participate in the program.

14. The Tenant testified that she has looked extensively for other rental units in Toronto, but they are not affordable. She testified that she has a number of medical issues that affect her on a daily basis. She testified that if she were evicted, she would likely go into the shelter system.
15. The Landlord's representative submits that the Tenant has known since at least May of 2022 that the Landlord sold the unit, and the purchaser intends to move in. The Landlord is seeking a standard order.
16. Based on the circumstances, I find that it would not be unfair to delay the termination date to August 15, 2023. I appreciate that the purchaser has been patient and maintains the intention to reside in the property as evidenced by the amendments to the APS. The Tenant has been aware of potential termination of her tenancy for some time, in consideration of her circumstances, and also given the delay in issuance of this order I find that a delay is fair in the circumstances.
17. I am not prepared to refuse to grant the application in accordance with section 83.1 (a) as submitted by the Tenant's representative. Although the Tenant testified to her own personal circumstances, a landlord is entitled to sell the property, serve an N12 on behalf of the purchaser, and the purchaser is entitled to move into the property. Having regard to all the circumstances, it would be unfair to refuse the Landlord's application.
18. 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.

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.

July 6, 2023

Date Issued

Emily Robb

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 15, 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.