



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

**Citation:** Alan Nicholas v Lubna Zia, 2023 ONLTB 43460

**Date:** 2023-06-13

**File Number:** LTB-L-077113-22

**In the matter of:** 43, 135 BELMONT DR  
LONDON ON N6J4J3

**Between:** Alan Nicholas Landlords  
Lorenda Nicholas

**And**

Lubna Zia Tenants  
Sarah Zia

Alan and Lorenda Nicholas (the 'Landlords') applied for an order to terminate the tenancy and evict Lubna Zia and Sarah Zia (the 'Tenants') because the Landlords, in good faith, requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on May 30, 2023.

The Landlords, the Landlord's Representative, Daniel Abraham, and the Tenants' Agent (son) Mohammad Ali Zia, attended the hearing.

**Determinations:**

1. As explained below, the Landlords 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 shall terminate August 31, 2023.
2. The Tenants are in possession of the rental unit and have been since January 2019.
3. On October 21, 2022, the Landlords gave the Tenants an N12 notice of termination by placing it in the Tenants' mailbox. The N12 had a termination date of December 31, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords' child.

4. The Landlords applied to the Board on December 13, 2022. The Landlords included a Declaration with their application, indicating that the Landlords' daughter, in good faith, requires the rental unit for her own use for at least one year.
5. The Landlord, Alan Nicholas (AN), testified that they had purchased the rental complex, a three bedroom, two-storey rental unit, on March 31, 2022. The intent of the purchase was to eventually give the Landlords' daughter her own place to live, while still living relatively close to the Landlords.
6. AN testified that the Landlords own three properties. They own one other townhouse unit that is located in the same residential complex as this rental unit. That other unit is currently occupied by another one of the Landlords' children. The other property they own is their own residence. All three properties are in the same neighbourhood.
7. AN testified that they gave the Tenants the compensation of the equivalent of one-month's rent, which is required to be given to the Tenants pursuant to section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act'). AN served this payment in the form of a cheque. The payment was made by placing the cheque in the mailbox on December 23, 2022. The Tenant denied having received the cheque. AN confirmed that the cheque had not been cashed as of the hearing date. The Landlords' Representative stated that since the cheque was nearly "stale dated", a new cheque could be released.
8. Pursuant to section 55.1 of the Act, the Landlord is to pay compensation on or before the termination date stated on the notice. AN has testified that the Landlords have complied with this section of the Act. However, the Tenant testified to checking their mailbox regularly and denied having received the compensation.
9. Pursuant to section 190(2) of the Act, the Board may extend time requirements in the Act that are not addressed in section 56 of *O. Reg 516/06* (the 'Regulations'). Compensation pursuant to section 48.1 of the Act is not named in section 56 of the Regulations, therefore, the Board has the authority to extend the payment deadline set in section 55.1 of the Act.
10. At the hearing, the parties agreed to allow the Landlords to cancel the cheque and send an e-transfer to the Tenants. At 11am, the Tenants confirmed receipt of the compensation.
11. Therefore, I am satisfied the Landlords have met the conditions set in section 48.1 of the Act by compensating the Tenants the equivalent of one-month of rent.
12. The Landlords stated that when they purchased the property, they thought that the Tenants would have vacated earlier, and that the Landlords' daughter would have moved into the unit already. The daughter currently lives in the Landlords' home. However, at the hearing, and after the Tenants' evidence was presented, the Landlords stated that they would not oppose a termination date two months from the order date.
13. At the hearing, the Tenants did not challenge the Landlords' good faith of serving the N12 to the Tenants and do believe that the Landlords intend to have their daughter reside in the unit for a period of at least one year.

14. I am satisfied that the Landlords, in good faith, require possession of the rental unit for the purpose of allowing the Landlords' child to reside in the rental unit for a period of at least one year.

#### Daily Compensation Claim

15. The Tenant was required to pay the Landlord \$5,952.23 in daily compensation for use and occupation of the rental unit for the period from January 1, 2023 to May 30, 2023.
16. Based on the Monthly rent, the daily compensation is \$39.68. This amount is calculated as follows: \$1,206.98 x 12, divided by 365 days.

#### Relief From Eviction- Evidence

17. The Tenant's Agent, Mohammad Ali Zia (MZ), is the son of the Tenants and the sole income-earner for the household. MZ is speaking on behalf of the Tenants because his English skills are stronger than the Tenants. The Landlords did not oppose MZ presenting evidence on the Tenants' behalf.
18. MZ testified that they had moved into the rental unit in January 2019 and have been residing there for over four years. The two Tenants, MZ and MZ's wife reside in the rental unit.
19. MZ testified that when they received the N12, they began to look for a new rental unit, however, due to the low inventory of available rental units that meet their needs and are affordable, they have been unable to find a new place. The Tenants currently pay \$1,237.15/month to rent their current rental unit. The price of the rental units that they have been looking at that are similar in size to their current unit are between \$1,800 and \$2,000/month and do not stay on the market very long.
20. MZ testified that the Tenant, Sarah Zia (SZ), had a hernia operation in November 2022. Because of the hernia operation, the Tenant was unable to work and eventually had her employment terminated. The hernia surgery has caused SZ to endure pain which has hindered her ability to move freely. MZ testified that the layout of the rental unit is such that the stairs are easy for SZ to negotiate. Furthermore, the kitchen, bathroom and living room are on the main floor, which makes most of the rental unit easily accessible for SZ.
21. MZ also testified that the rental unit was within a 30-minute walking distance of three different Mosques. The Tenants attend services and prayer regularly, and the location makes it easier for the Tenants to attend services without driving. The Tenants are afraid that if they move, they will have their ability to practice their religion hindered. On cross-examination, MZ admitted that wherever they live, they will find a way to continue to attend services on a regular basis.
22. The Tenants are asking the Board to deny the Landlords' application, pursuant to section 83(1) of the Act.

#### Relief From Eviction- Analysis

23. 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.

24. Section 83(2) of the Act states:

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

- 25. MZ provided testimony that the rental unit's physical layout is ideal for SZ because SZ has easy access to all of the amenities of the rental unit on one floor. This is particularly important because the Tenant is recovering from hernia surgery. However, the Tenants' testimony did not present any evidence that SZ requires specific accommodation, such as ramps, or for any new rental unit not to have any stairs.
- 26. Based on the evidence before me, I do not find that any disability that SZ is suffering from significantly limits the available rental units on the market. I am not satisfied that the new rental unit requires any specific accommodations that are not generally available at other rental units.
- 27. The Tenants also testified that they would require a three-bedroom unit for their family to continue to allow MZ to support his family, including his parents. However, due to the escalation of rent rates that is being experienced throughout Ontario, the ability to find a new rental unit within their budget is further hindered.
- 28. I am satisfied that the size of the unit required for the Tenants to reside in would further hinder their ability to find a new rental unit both due to lack of availability of those units and their affordability.
- 29. MZ gave testimony that religion, and the church, are integral parts of their family's life. They stated that they regularly attend services at three different Mosques, all of which are within a 30-minute walk of their current rental unit. However, when cross-examined, MZ stated that the practice of their religion would not be affected by the move, however it might make attending services less convenient and more difficult.
- 30. Based on the Tenants' testimony of their ability to access their places of worship, I am satisfied that the Tenants' ability to attend religious services should be considered when applying section 83 to the order.
- 31. I find that, based on the evidence before me, that it would be unfair to deny eviction under section 83. Although I am satisfied that the Tenants will have significant challenges in

finding the right place to move to, I find that despite those challenges, it would not be unfair to grant the Landlord's application.

32. However, I find it would not be unfair to postpone the eviction to allow the Tenants more time to find new accommodations. The Tenants have specific needs for a new rental unit that need to be met, and I am satisfied that those challenges will significantly hinder their ability to find a new rental unit.
33. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 1, 2023, the Landlords 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 Landlords on or after September 1, 2023.
4. The Tenants shall pay to the Landlord \$5,952.23, less any amount already paid to the Landlords. This represents compensation for the use of the unit from January 1, 2023, to May 30, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenants shall also pay the Landlords compensation of \$39.68 per day for the use of the unit starting May 31, 2023, until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlords the full amount owing on or before August 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from September 1, 2023, at 6.00% annually on the balance outstanding.

**June 13, 2023**

**Date Issued**

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Robert Brown

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.