



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

**Citation:** Lingyan Lu v Sevi Salih Mahad, 2023 ONLTB 42592

**Date:** 2023-06-13

**File Number:** LTB-L-081464-22

**In the matter of:** 41 ROCKPORT CRES  
RICHMOND HILL ON L4C2L7

**Between:** Lingyan Lu Landlord

**And**

Nazdar Nezam Guri Alqayat Tenants  
Salim Salih Mahad  
Sevi Salih Mahad  
Viyan Tayro Gri Alqabat  
Zedo Tairo Gri Alqabat

Lingyan Lu (the 'Landlord') applied for an order to terminate the tenancy and evict Nazdar Nezam Guri Alqayat, Salim Salih Mahad, Sevi Salih Mahad, Viyan Tayro Gri Alqabat and Zedo Tairo Gri Alqabat (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 31, 2023.

Only the Landlord (LL), her legal representative Cynthia PS Cheung (CC), witness for the Landlord Lu Zhang (LZ), assisted by Mandarin translator Ming Ren, attended the hearing.

As of 3:21 pm, the Tenants were not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations and Reasons:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy as detailed below.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The tenancy began around December 30, 2018.
4. The rental unit is a single family home and the Tenants occupy the whole home.

N12 Notice of Termination – Purchaser's Own Use

5. On December 19, 2022, the Landlord gave the Tenants an N12 notice of termination deemed served on December 19, 2022 with the termination date of February 28, 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.
6. The Landlord has proven that:
  - o the residential complex contains three or fewer units.
  - o the Landlord has entered into an agreement of purchase and sale of the residential complex.
  - o the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
7. Pursuant to s.72(1) of the Act, the Landlord filed the declaration required stating that the purchaser intends to move into the rental unit for no less than one year.
8. Pursuant to s.49(1), the Landlord has compensated the Tenants an amount equal to one month's rent by February 28, 2023. The Landlord testified that she provided a cheque to the Tenant dated January 17, 2023 and followed up with the Tenants by text message. The Tenants did not cash the cheque and responded to the Landlord saying, "I don't want it." Based on the uncontested evidence, I am satisfied the Landlord met the requirement for compensation.
9. The Landlord has not, within two years prior to filing this application, given any other notice under section 48, 49 or 50 of the Residential Tenancies Act, 2006 (the "Act") in respect of the same or a different rental unit.

Testimony and Evidence

10. The Landlord's evidence included confirmation of compensation, lease agreement, the OREA Agreement of Purchase and Sale, the OREA Amendment to Agreement of Purchase and Sale and various documents.

11. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.
12. It is the position of the Landlord that on or December 17, 2022, the Landlord entered into an agreement of purchase and sale for the residential unit. The OREA agreement was submitted as evidence. Schedule A of the agreement confirms that the completion of the transaction is contingent on vacant possession.
13. The Landlord said that when the Tenants did not vacate by the termination date, the Landlord completed an amendment to the OREA agreement to extend the closing date to June 30, 2023.
14. It is the position of the Landlord that all requirements have been met and is seeking immediate termination of tenancy.
15. Witness for the Landlord LZ testified that she entered into the agreement of purchase and sale so that she could reside in the rental unit along with her husband, intends to move in once vacant possession is provided and intends to live there for no less than 1 year.
16. I found the evidence presented by both parties equally credible and persuasive with respect to the agreement of purchase and sale, the purchased intent to move into the rental unit and the good faith intention of the Landlord. I have not reason to doubt the truthfulness of the testimonies.

### Law and Analysis

17. The N12 notice was served pursuant to section 49(1) of the Residential Tenancies Act, 2006 (Act) which states, in part:

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;

18. The onus is on the Landlord, as the applicant, to establish that there is a valid agreement of purchase and sale in place and that the purchaser, in good faith, has a genuine intention to occupy the premises. 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 proposal.

19. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court again held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. Thus, the Landlord must establish that the purchaser genuinely intends to move into the unit. The Court also held in *Salter* that the Landlord's motives are 'largely irrelevant'.
20. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's position nor do I doubt the truthfulness of the Purchaser's intention to move into the rental unit. I am therefore satisfied on the balance of probabilities, that the Landlord, in good faith, served the Tenants with the N12 notice and that the Purchaser requires possession of the rental unit for the purpose of residential occupation and that she genuinely intend to reside in the unit for at least one year.

#### Daily Compensation and Rent Deposit

21. The Tenant was required to pay the Landlord \$8,272.44 in daily compensation for use and occupation of the rental unit for the period from March 1, 2023 to May 31, 2023.
22. The Landlord said the Tenants are not in arrears of rent.
23. Based on the Monthly rent, the daily compensation is \$89.92. This amount is calculated as follows: \$2,735.00 x 12, divided by 365 days.
24. Although the L2 application indicates there is no last month's rent on deposit, the Landlord said a deposit in the amount of \$2,650.00 was collected at the commencement of the tenancy and is still held by the Landlord. The deposit must be applied to the last month of the tenancy.

#### Section 83 Considerations

25. I turned my mind to the circumstances of the parties to determine the termination of the tenancy.
26. The Tenants did not attend the hearing to testify or defend their position.
27. The Landlord said there are children living in the rental unit but has no knowledge of their age. The Landlord also said she has no knowledge of the Tenants' financial or medical circumstances and is unaware of any reasons to delay or deny eviction.

28. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
29. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 24, 2023.
2. If the unit is not vacated on or before June 24, 2023, then starting June 25, 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 June 25, 2023.
4. The Tenants shall also pay the Landlord compensation of \$89.92 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit.

**June 13, 2023**

**Date Issued**

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Dana Wren

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 December 25, 2023 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.

