



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

Citation: Michael Guthrie v Jason Lamoureux, 2023 ONLTB 42029

Date: 2023-06-09

File Number: LTB-L-039770-22

In the matter of: Unit 1 Main Floor, 1 CALVERLEY ST
ORILLIA ON L3V3T3

Between: Michael Guthrie Landlord

And

Jason Lamoureux Tenants
Jenna Gare

Michael Guthrie (the 'Landlord') applied for an order to terminate the tenancy and evict Jason Lamoureux and Jenna Gare (the 'Tenants') 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 April 5, 2023.

The Landlord and the Landlord's Legal Representative Eril Bregu and the 1st named Tenant attended the hearing. I was satisfied Mr. Lamoureux had authorization to speak on behalf of Jenna Gare, as he stated it was his girlfriend and she was aware of this hearing.

Procedural History:

1. The matter was previously adjourned from March 9, 2023, as Mr. Lamoureux had stated that he received the Notice of Hearing on or about March 2, 2023, and had not been able to retain legal representation nor prepare give rebuttal evidence.

Determinations:

2. 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.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The monthly rent is \$1,200.00 and is due on the 1st day of each month. The Tenant testified the break down of the rent was \$600.00 for the books and \$600.00 in cash. Regardless, of the method of payment, the Tenants' own evidence during cross

examination supports that the monthly rent is \$1,200.00, when Mr. Bregu questioned the Tenant about that amount and the Tenant agreed. I am satisfied the monthly rent is \$1,200.00.

N12 Notice of Termination -Landlord's Own Use

5. On June 30, 2022, the Landlord gave the Tenant an N12 notice of termination which was deemed served on or about June 30, 2022, with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for his own use (Michael Guthrie).
6. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
7. The Landlord has compensated the Tenant an amount equal to one month's rent. The Landlord compensated the Tenant by August 31, 2022. The Landlord gave the Tenant a letter dated March 22, 2022, deducting arrears the Tenant owed. The Tenant agreed that he received the letter but did not agree with the balance of the arrears. Although, the compensation was from a previous N12 application, I was satisfied the Tenant received the letter sent by the Landlord and received compensation.

Good Faith

8. The main issue to be determined is whether the Landlord has established that he in good faith require possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the Act.
9. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by,
 - (c) a child of the landlord...
 - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
10. The N12 Notice of Termination gave the Tenants at least 60 days' notice. An email-transfer of one month's rent was sent to the Tenants on the termination date listed in the N12. Therefore, the only issue to be determined in this application is whether the Landlord has satisfied the "good faith" requirement of subsection 48(1) of the Act.
11. Section 48 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 Landlords' intention, nor the fact that the Landlords 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.)).

The Evidence

12. Michael Guthrie, the Landlord testified. He stated that he had sold his other house and his intention was to retire and reside at the rental property.
13. The Tenant cross examination questions were directed to why the Landlord did not provide him a copy of the lease. There was some discussion about another Board application that had been heard March 14, 2023. Nothing turned on this line of questioning.
14. The Tenant Jason Lamoureux testified. He stated that he was unaware of his rights as a Tenant until December 2021. There were statements a harassment issue in February 2022 and that police attended, took a report, but Police advised the Tenant there is nothing they can do. More of the testimony was regarding rent again, NORI issues, and the lease agreement not being provided by the Landlord until ordered by a Board Member to provide a lease.

Analysis

15. There appears to be some tension between the Landlord and the Tenant, and it has results in other applications before the Board and various complaints by the Tenant about a copy of a lease agreement. However, the main reason for this application appears that the Landlord's desire is to retire in this rental property. I am satisfied therefore he genuinely intends to occupy the rental unit for his own use for at least 12 months. I therefore find that the Landlord has a good faith intention to possess the rental unit for the purpose of residential occupation for at least 12 months. At the hearing, the Tenant did not provide any evidence about bad-faith intention, but his testimony centered more on another application.
16. I asked both parties on submission on eviction. The Landlord stated the wished to extend eviction to April 30, 2023. The Tenant testified it is difficult to find a new place to live and they were asking 6 to 8 months to vacate but did settle for June 30, 2023, to vacate. I will note this request for June 30, 2023, was from the hearing date in April.
17. 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 June 30, 2023, pursuant to subsection 83(1)(b) of the Act.

Other Determinations

18. The Tenant was required to pay the Landlord \$8,561.10 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to April 5, 2023.
19. Based on the Monthly rent, the daily compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.

20. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
21. There is no last month's rent deposit.

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 June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 1, 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 July 1, 2023.
4. The Tenant shall pay to the Landlord \$8,561.10, which represents compensation for the use of the unit from September 1, 2022 to April 5, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting April 6, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
7. If the Tenant does not pay the Landlord the full amount owing on or before June 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from July 1, 2023 at 6.00% annually on the balance outstanding.

June 9, 2023
Date Issued

Anthony Bruno
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 January 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.