



Tribunals Ontario
Landlord and Tenant Board

Tribunaux décisionnels Ontario
Commission de la location immobilière

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

Citation: Winston Harriott v Shaunessy Pearson, 2023 ONLTB 41825

Date: 2023-06-09

File Number: LTB-L-061170-22

2023 ONLTB 41825 (CanLII)

In the matter of: Room 4, 204 WELLINGTON ST
BRANTFORD ON N3S3Z2

Between: Winston Harriott Landlord

And

Shaunessy Pearson Tenant

Winston Harriott (the 'Landlord') applied for an order to terminate the tenancy and evict Shaunessy Pearson (the 'Tenant') 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 19, 2023.

Only the Landlord and the Landlord's Legal Representative Vijay Shah attended the hearing.

As of 9:38 a.m., the Tenant was 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:

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. **N12 Notice of Termination**

Landlord's Own Use

On September 30, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on September 30, 2022 (the N12 notice was handed to the Tenant) with the termination date of November 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for their own use.

4. The Landlord in good faith requires possession of the rental unit for the purpose of their own use residential occupation for a period of at least one year.
5. The Landlord has compensated the Tenant an amount equal to one month's rent by November 30, 2022. The Landlord presented video evidence showing him paying the Tenant cash at the front door of the rental unit.

Good Faith

6. The main issue to be determined is whether the Landlord has established that he in good faith requires possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the Act.
7. 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.
8. 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.

9. 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.)).
10. Based on the uncontested evidence, I am satisfied the Landlord in good faith requires possession of the rental unit for the purpose of their own use residential occupation for a period of at least one year.
11. The Tenant was required to pay the Landlord \$1,841.10 in daily compensation for use and occupation of the rental unit for the period from December 1, 2022 to April 19, 2023.
12. Based on the Monthly rent, the daily compensation is \$13.15. This amount is calculated as follows: \$400.00 x 12, divided by 365 days.
13. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
14. There is no last month's rent deposit.
15. 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.

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 20, 2023.
2. If the unit is not vacated on or before June 20, 2023, then starting June 21, 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 21, 2023.

4. The Tenant shall pay to the Landlord \$1,841.10, which represents compensation for the use of the unit from December 1, 2022 to April 19, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$13.15 per day for the use of the unit starting April 20, 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 20, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 21, 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 December 21, 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.