



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

Citation: Dan Hardick v Jenny Casselman, 2023 ONLTB 41604

Date: 2023-06-09

File Number: LTB-L-065759-22

In the matter of: Lower-996 Blythwood Road London,
ON N6H 5W1

Between: Dan Hardick Landlord

And

Jenny Casselman Tenant

Dan Hardick (the 'Landlord') applied for an order to terminate the tenancy and evict Jenny Casselman (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 May 1, 2023.

The Landlord, the Landlord's Legal Representative Christine Croft and the Tenant attended the hearing. The Tenant met with Tenant Duty Counsel prior to the hearing.

Determinations:

Preliminary Issues – Adjournment Request

1. The Tenant testified that she was unable to serve evidence upon the Landlord and the Board because she had just received notice of the hearing the week prior and submitted that her unit's address was not properly noted in the documentation.
2. Having reviewed the Board's documentation, I noted that the Notice of Hearing was mailed to the Tenant on March 19, 2023, which was deemed served March 24, 2023, over thirty days prior to the hearing. The address noted was "lower unit". The Landlord's Legal

Representative submitted that she had also sent the Tenant the Notice of Hearing by way of e-mail on March 27, 2023.

3. As such, based on the evidence of the parties I was satisfied that the Tenant was given sufficient notice of the hearing and had ample opportunity to prepare and disclose her evidence. As such, the adjournment request was denied.
4. The Tenant further submitted that the City of London does not consider the residential complex to contain two separate addresses as the property is registered as a single-family home. Further, the Tenant raised the issue that the Landlord does not have a license from the City of London for a rental property and submitted that the Landlord's application should be dismissed. The Tenant submits further that the other tenants in the upper unit should have been included in the notice of termination as the property is not licensed for two rentals.
5. The Landlord's Legal Representative submitted that the other tenants do not have to be listed as they are living in a separate unit and the Landlord only intends on occupying the lower unit.
6. While the Tenant raised this issue as a preliminary motion, no documentation was provided to show precisely what the City of London has designated as the property's use. As such, I was satisfied that the Landlord's notice and application properly named the Tenant's unit.
7. Further, the Tenant raised a preliminary issue that the Landlord had unilaterally waived rent for the month of November 2022 without her permission. This is a process that is permitted under the Act and as such, the Tenant's preliminary motions to dismiss the Landlord's application are denied.

Landlord's Application

8. 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. Therefore the tenancy is terminated as of July 31, 2023.
9. The Tenant was in possession of the rental unit on the date the application was filed.
10. On November 2, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served that same date, with the termination date of January 31, 2023. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation for himself.
11. The Landlord testified that he had initially served the Tenant with an N12 Notice of Termination in March of 2022, as he had been renting a condominium from a childhood friend after he had separated from his wife.
12. The Landlord testified that in January of 2022, his landlord had told him that he intended on selling the property. A letter dated March 10, 2022 from the Landlord's landlord to him was entered into evidence.

13. The Landlord testified that the initial N12 had been dismissed due to a clerical issue with the unit's address and the required compensation.
14. The Landlord testified further that he is currently residing with his parents while his furniture and belongings are currently in storage.

Tenant's Evidence

15. The Tenant testified that she does not believe the Landlord will move into her unit as she believes she is being evicted due to her opposition to the Landlord trying to remove internet from her unit. She further testified that the Landlord has threatened her with eviction in the past when things wouldn't go his way.
16. The Tenant testified that because the Landlord is in violation of city By-Laws that he should not be trusted.

Analysis & Findings

17. Based on the evidence I have considered from both parties; I find on a balance of probabilities that 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.
18. The Landlord has provided evidence that he had been renting a condominium from a friend for some time and that friend has decided to sell the unit. The Landlord has since moved in with his parents and his belongings are in storage.
19. While the Tenant may believe the Landlord is untrustworthy, no evidence was provided to show any sort of history of animosity as testified to by the Tenant, or that the Landlord is in violation of any City of London By-Laws. .
20. The Landlord has compensated the Tenant an amount equal to one month's rent by January 31, 2023.

Daily Compensation

21. The Tenant was required to pay the Landlord \$2,411.51 in daily compensation for use and occupation of the rental unit for the period from February 1, 2023 to May 1, 2023.
22. Based on the Monthly rent, the daily compensation is \$26.79. This amount is calculated as follows: \$815.00 x 12, divided by 365 days.
23. Since the termination date in the notice of termination, the Tenant paid the Landlord \$2,411.51 in rent.
24. The Landlord collected a rent deposit of \$815.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$111.89 is owing to the Tenant for the period from January 1, 2014 to May 1, 2023 .

25. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Section 83 Considerations

26. The Tenant is employed and lives alone. The Tenant testified that she has had issues finding a new unit based on the increased rent amounts and testified that she has no family in the area. That said, the Tenant has been aware of the Landlord's intentions for some time and will be given until the end of July to vacate the unit.
27. 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

28. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 31, 2023.
29. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
30. 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 1, 2023.
31. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$926.89.
32. However, the Landlord is authorized to deduct from amount owing to the Tenant \$26.79 per day for compensation for the use of the unit starting May 2, 2023 to the date the Tenant moves out of the unit.
33. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 9, 2023

Date Issued

Jagger Benham

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

File Number: LTB-L-065759-22

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 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.

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