



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

Citation: Devasahayam v Singh, 2023 ONLTB 39908

Date: 2023-06-05

File Number: LTB-L-031497-22

In the matter of: Rm # 1, Basement, 1389 BIRCHMOUNT RD SCARBOROUGH
ON M1P2E2

Between: Alexin Floret Devasahayam Landlord

And

Kirandeep Singh Tenant

Alexin Floret Devasahayam (the 'Landlord') applied for an order to terminate the tenancy and evict Kirandeep Singh (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.

This application was heard by videoconference on February 9, 2023.

The Landlord and the Tenant attended the hearing.

Determinations:

1. On April 1, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The N12 notice was served under section 48(1) of the Residential Tenancies Act, 2006 ("Act"). The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by her son.

Compensation:

2. Section 48.1 of the Act states that, "a landlord shall compensate a tenant in the amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy on behalf of a purchaser under section 48(1)".

3. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the Tenant no later than the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is January 1, 2021.
4. On April 01, 2022, the Landlord gave to the Tenant \$300.00 in cash, which is equal to one month's rent. The Tenant returned the compensation to the Landlord immediately.
5. The Tenant conceded that he rejected the compensation because the Landlord did not advise him of the purpose of the money. The Tenant asserts that he received no enquiries from the Landlord concerning the compensation afterwards.
6. I am satisfied based on the evidence that the Landlord paid the Tenant compensation equal to one month's rent on April 01, 2022, in person, and thus satisfied sections 84.1 and 55.1 of the Act . Thus, the fact that the Tenant chose to decline to accept the Landlord's payment cannot reasonably result in a finding that the Landlord failed to provide the payment. However, as the payment was not resent after it was rejected by the Tenant, I will order that it be paid by the Landlord to the Tenant accordingly.

Good Faith

7. At the Hearing, the Landlord testified that her son got married on May 04, 2022 and requires the rental unit for residential occupation as they can't reside together upstairs due to limited space. The Landlord claims that moving her son and daughter-in-law into the basement will enable them to live separately as a married couple.
8. The Tenant claims that the Landlord gave him the notice because he reported the Landlord to Rent Control about the Landlord's refusal to provide him with rent payment receipts since 2017 and also when the Tenant complained to the police about the Landlord sending him evictions threats.
9. The Tenant believes that the Landlord's notice was given in bad faith, as the Landlord's older son rarely stays in the residential unit due to frequent travel for work as a consultant. Additionally, the Landlord's husband is primarily based in the U.S. as a mechanical engineer. As a result, the upstairs living space would suit the Landlord, her sons, and her daughter-in-law. The Tenant alleges that the Landlord intends to make him vacate the unit and re-rent it for a higher price.
10. In this case, the Tenant claims that the Landlord was seeking to terminate the tenancy due to the breakdown in their relationship since the Tenant complained about the rent receipts and eviction threats. However, the existence of difficulties between parties does not place a reverse onus on a landlord to show that he has not acted in bad faith. The determining factor is whether the Landlord's son and daughter-in-law intend to live in the unit for residential purposes in good faith, regardless of any past difficulties. If the legal test required a problem-free relationship, landlords could only serve an N12 form in extremely rare circumstances.

11. The Landlord filed an Affidavit sworn by Albin Inigo, the person who personally requires the rental unit, which certified that he, in good faith, requires the rental unit for her personal use for at least one year. Additionally, nothing in the Landlord's sworn testimony suggests any credibility issue.
12. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Landlord's intentions for her son and daughter-in-law to live in the rental unit for at least a year are genuine and made in good faith.

Relief From Eviction:

13. 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.
14. At the hearing, the Tenant explained that he needed to continue living in the unit to use it as his permanent address, which would improve his security clearance and increase his chances of being accepted into a government job, including the Canadian Armed Forces. The Tenant sought a six-month delay eviction, allowing him to secure his new job and residence accordingly.
15. The Landlord requests a standard order of termination because the Tenant was given the N12 notice on April 01, 2022 and has had enough time to find a new place to live.
16. On balance, postponing the eviction until June 30, 2023, pursuant to subsection 83(1)(b), is appropriate as it gives the Tenant some time to search for a place and move out of the residential unit.

It is ordered that:

1. The Landlord shall pay the Tenant \$300.00 compensation on or before June 19, 2023
2. If the Landlord complies with paragraph one above, 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.
3. 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.
4. 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.
5. The Tenant shall also pay the Landlord compensation of \$9.86 per day for the use of the unit starting July 1, 2023 until the date the Tenant moves out of the unit.

6. The Landlord is authorized to deduct from amount owing to the Tenant \$9.86 per day for compensation for the use of the unit starting February 10, 2023 to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

June 05, 2023

Date Issued

Percy Laryea

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.