



**Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006**

**Citation:** Jian-Shong Zhu v Chantal Ashton, 2023 ONLTB 38649

**Date:** 2023-05-24

**File Number:** LTB-L-023737-22-RV

**In the matter of:** 111 Palmerston Ave  
Whitby ON L1N3E6

**Between:** Jian-Shong Zhu Landlord

**And**

Chantal Ashton Tenant

2023 ONLTB 38649 (CanLII)

Jian-Shong Zhu (the 'Landlord') applied for an order to terminate the tenancy and evict Chantal Ashton (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 Tenant has been persistently late in paying the Tenant's rent.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was resolved by order LTB-L-023737-22 issued on March 23, 2023.

On March 23, 2023, the Tenant requested a review of the order and that the order be stayed until the request to review the order is resolved.

On March 27, 2023, interim order LTB-L-023737-22-RV-IN was issued, staying the order issued on March 23, 2023.

This application was heard by videoconference on April 17, 2023.

The Landlord, the Landlord's Legal Representative, Yun Tao Li, and the Tenant attended the hearing. The Tenant spoke with Duty Counsel prior to the hearing.

**Determinations:**

Review Request Granted

1. The Tenant was not reasonably able to participate at the hearing on January 12, 2023. I accept the Tenant's testimony that she did not receive the Notice of Hearing of hearing from the LTB until January 16, 2023. Accordingly, the Tenant's review request was granted and the application was heard again.

L2 application

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. Therefore, the Landlord's application is granted.
3. The Tenant was in possession of the rental unit on the date of the hearing.
4. N12 Notice of Termination Landlord's Own Use

On April 19, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation.

5. 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. The Landlord says that the rental unit is more suitable for her use as compared to her current residence. The Landlord says that she has mobility issues and difficulty with stairs. She has fallen down a couple times while using the stairs in her current residence in March 2022 and April 2022. The rental unit she intends to move into is more suitable because it is a bungalow and does not have stairs inside the rental unit. The Landlord confirms she will be living there for more than a year.
6. The Tenant says that she believes the Landlord will not move in because her reasons for moving in keeps changing. She was initially told that the Landlord wants to move into the rental unit because she had sold her condo. The Tenant also says that she hasn't kept up with the maintenance of the property and believes the Landlord has brought this application in bad faith.
7. The test of good faith is genuine intention to occupy the residential unit and not the reasonableness of the landlord's proposal (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions, this legal test remains unchanged and the "good faith" requirement simply means a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"). In *Salter*, the Divisional Court also stated that Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of Landlord. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC) ("Fava").
8. In this case, I find the Landlord genuinely intends to move even if the Landlord's reasons for moving in changed, the courts have confirmed that the Landlord's motives do not affect the good faith of the Landlord. Despite her reasons, the Landlord has established she genuinely intends to move into the rental unit for residential occupation for more than a year. With respect to the maintenance of the property, the evidence lead indicate that there was an issue with a tree and the fence at the residential complex. Ultimately, the Landlord removed the tree. There was nothing in the Landlord's conduct or motives that would lead me to draw a negative inference on the good faith of the Landlord.
9. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022. Compensation was paid by waiving the rent for the month of June 2022.

10. N8 Notice of Termination

Having determined that the tenancy terminates on the N12 notice, there is no need to determine the merits of the N8 notice.

11. Daily compensation, NSF charges, rent deposit

The Tenant was required to pay the Landlord \$15,307.40 in daily compensation for use and occupation of the rental unit for the period from July 1, 2022 to April 17, 2023.

12. Based on the Monthly rent, the daily compensation is \$52.60. This amount is calculated as follows: \$1,600.00 x 12, divided by 365 days.

13. The Tenant paid \$11,386.00 on November 11, 2022. Therefore, the daily compensation owed to the Landlord for the period from July 1, 2022 to April 17, 2023 is \$3,921.40

14. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

15. There is no last month's rent deposit.

16. Relief from eviction

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.

The tenancy is terminated at no fault of the Tenant. The Tenant has lived at the rental unit for 5 years. She says she is a single mother with 2 children, and it has been hard for her to find a place. She says most places are asking for rent to be paid up front and she doesn't have the money. On the other hand, the Landlord currently has a place and did not establish any urgency to retake possession of the rental unit. Under these circumstances, it would not be unfair to delay the eviction to allow the Tenant time to make alternate housing arrangements.

**It is ordered that:**

1. The request to review order LTB-L-023737-22 issued on March 23, 2023 is granted. The order is cancelled and replaced by the following.
2. 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 pay to the Landlord \$3,921.40, which represents compensation for the use of the unit from July 1, 2022 to April 17, 2023, less the payment made by the Tenant on November 11, 2022.
6. The Tenant shall also pay the Landlord compensation of \$52.60 per day for the use of the unit starting April 18, 2023 until the date the Tenant moves out of the unit.
7. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
8. The total amount the Tenant owes the Landlord is \$4,107.40.
9. 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.

**May 24, 2023**  
**Date Issued**

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Khalid Akram

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.