



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

Citation: Christopher Wayne Johnson v Wendelene Whiteye, 2023 ONLTB 37149

Date: 2023-05-23

File Number: LTB-L-064943-22

In the matter of: 1770 4TH AVE E
OWEN SOUND ON N4K2R3

Between: Christopher Wayne Johnson Landlord

And

Wendelene Whiteye Tenant

Christopher Wayne Johnson (the 'Landlord') applied for an order to terminate the tenancy and evict Wendelene Whiteye (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 20, 2023.

The Landlord, the Landlord's witness, Ashley Johnson ('AJ'), and the Tenant attended the hearing.

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. On September 23, 2022, the Landlord gave the Tenant an N12 notice of termination 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 by the Landlord's child, AJ.
4. AJ intends to move into the rental unit as soon as it is vacant. She intends to occupy the rental unit because she is going to college and working in Owen Sound. She presently

lives in Chelsey, Ontario with her parents, which is approximately a 30-35 minute drive from Owen Sound.

5. I accept the evidence of the Landlord and AJ that AJ, in good faith, intends to move into the rental unit and to stay there for at least one year. In fact, AJ stated that her plan is to stay there for at least 4 years.
6. The Landlord compensated the Tenant an amount equal to one month's rent by November 30, 2022. In particular, the Landlord gave the Tenant a cheque in the amount of \$790.98 on November 29, 2022. The Tenant stated that she did not deposit the cheque and it may now be stale dated. If the cheque cannot now be deposited, the Landlord is required to pay the Tenant \$790.98, but since the cheque was given to the Tenant before the termination date, I am satisfied that the Landlord complied with the requirement to give the Tenant compensation in an amount equal to one month's rent before the termination date.
7. The monthly rent increased from \$790.98 to \$810.00 as of January 1, 2023. The Tenant was required to pay the Landlord \$3,735.30 in daily compensation for use and occupation of the rental unit for the period from December 1, 2022 to April 20, 2023.
8. Based on the Monthly rent for December 2022, the daily compensation was \$26.00 for that month. This amount is calculated as follows: $\$790.98 \times 12$, divided by 365 days. From January 2023 forward, the daily compensation is \$26.63. This amount is calculated as follows: $\$810.00 \times 12$, divided by 365 days.
9. There is no last month's rent deposit.

Section 83 Analysis

10. During her evidence, the Tenant raised maintenance issues, which I have considered with respect to subsection 83(3)(a) of the Residential Tenancies Act, 2006 (the 'Act'). This provision requires the Board to refuse to grant an eviction application if the Landlord is in "serious" breach of its responsibilities under the Act or a material covenant of the tenancy agreement.
11. The Tenant stated that she called municipal by-law enforcement because she received a pamphlet with her gas bill indicating that the gas furnace should be serviced at least one time per year. She stated that when the by-law officer attended, it was discovered that the rental unit did not have functioning smoke alarms. While this may have been a serious issue, the evidence before me was that the issue was rectified before the hearing. For subsection 83(3)(a) of the Act to be applicable, the alleged serious breach must be ongoing as of the hearing date.
12. While the Tenant alleged that the furnace had not been serviced since she moved in, there was no evidence that it was not functioning properly or adequately. I do not find this to be a serious breach of the Landlord's responsibilities under the Act.

13. The Tenant stated that she has lived in the rental unit for 6.5 years. She is a single person on a fixed income, and it is difficult to secure housing right now. The Tenant requested that if she is required to vacate the rental unit, that she be given at least 3 months for find other living accommodation.
14. The Landlord and AJ's evidence was that AJ needs to move into the rental unit because it is closer to her work and college than where she currently lives with her parents. She has to spend 30-35 minutes each day driving to Owen Sound from her current residence, and this is potentially hazardous during the Winter months.
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 not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act. This provides the Tenant with a reasonable amount of time to find new living accommodation, while also allowing AJ to move into the rental unit within a reasonable timeframe and in advance of the Winter months.

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 July 31, 2023.
2. 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.
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 August 1, 2023.
4. The Tenant shall pay to the Landlord \$3,666.68, which represents compensation for the use of the unit from December 1, 2022 to April 20, 2023, less any amounts already paid by the Tenant to the Landlord for this period.
5. The Tenant shall also pay the Landlord compensation of \$26.63 per day for the use of the unit starting April 21, 2023 until the date the Tenant moves out of the unit.

May 23, 2023

Date Issued

Mark Melchers
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 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.