



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

Citation: Hill v Darling, 2023 ONLTB 35756

Date: 2023-05-10

File Number: LTB-L-037106-22

In the matter of: 366 CENTRE STREET
WINGHAM ON N0G 2W0

Between: Joanne Hill Landlord

And

Linda Darling Tenant

Joanne Hill (the 'Landlord') applied for an order to terminate the tenancy and evict Linda Darling (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 March 6, 2023.

Only the Landlord Joanne Hill attended the hearing.

As of 10:28 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. Therefore, the tenancy is terminated as of May 21, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On April 25, 2022, the Landlord gave the Tenant an N12 notice of termination 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 for the Landlord Joanne Hill's own use.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):

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- (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,
 - (a) 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.
5. In this case, the N12 notice gives the Tenant over 60 days' notice and the termination date is the day a period of the tenancy ends.

Good Faith

6. I find that the Landlord in good faith requires possession of the rental unit for the purpose of her own residential occupation for a period of at least one year.
7. In *Salter v. Beljinac, 2001*, the Divisional Court held that:

“the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...”
8. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are “largely irrelevant”.
9. The Landlord testified that the unit is a single family home with 3 bedrooms and 1 bathroom and that the Landlord and her husband intend on moving into the home after selling their current unit for financial reasons. The Affidavit signed July 1, 2022 by Joanne Hill states her intention to occupy the unit for at least one year.
10. I find that the Landlord proved that it is more likely than not that she in good faith requires the rental unit for the purposes of residential occupation for a period of at least one year.

Compensation

11. The Landlord testified she has compensated the Tenant \$855.00, an amount equal to one month's rent on May 1, 2022 by paying cash to the Tenant in person.
12. 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 under section 48".
13. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination. In the present case, the termination date in the N12 Notice of Termination is September 14, 2022.
14. Based on the uncontested evidence by the Landlord, I find it is more likely than not the Landlord provided compensation to the Tenant an amount equal to one month's rent. The compensation was provided before June 30, 2022.

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15. The Landlord collected a rent deposit of \$800.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$73.25 is owing to the Tenant for the period from January 1, 2016.
16. 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.

Relief from eviction

17. 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 May 21, 2023.
2. If the unit is not vacated on or before May 21, 2023, then starting May 22, 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 May 22, 2023.
4. The Landlords shall return the balance of the last month's rent deposit, plus interest to the Tenant. As of the date of the hearing, the amount of the rent deposit

(\$800.00) and interest (\$73.25) the Landlord owes on the rent deposit to the Tenant is a total of \$873.25. The Landlords are authorized to deduct from amount owing to the Tenant \$28.70 per day for compensation for the use of the unit starting March 7, 2023 to the date the Tenant moves out of the unit if applicable.

5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order

May 10, 2023

Date Issued

Greg Witt

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 November 22, 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.