



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

Citation: Singh v Ferguson, 2023 ONLTB 35885

Date: 2023-05-09

File Number: LTB-L-037083-22

In the matter of: 10 HOUGHTON BLVD
MARKHAM ON L3P 2N6

Between: Baljinder Jit Singh Landlords
Gurdip Singh Badwal
Rajni Singh
Renu Saggi

And

Aiko Niiro Tenants Elaine yuk-ling Ferguson

Baljinder Jit Singh, Gurdip Singh Badwal, Rajni Singh and Renu Saggi (the 'Landlords') applied for an order to terminate the tenancy and evict Aiko Niiro and Elaine yuk-ling Ferguson (the 'Tenants') because:

- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 6, 2023 at 3:41 p.m.

The Landlord Baljinder Jit Singh, his representative Thirusenthuran Sivapatham, licensed paralegal, and the Tenants Aiko Niiro and Elaine yuk-ling Ferguson attended the hearing. The Landlord's witness Simrit Singh also attended the hearing.

Preliminary Issue:

1. As a preliminary matter, the Tenants requested an adjournment of the proceedings citing a lack of time to prepare for the hearing and retain legal representation, claiming the Tenants had not received the Notice of Hearing until February 27, 2023 and not successfully

retained representation despite attending a legal clinic in Richmond Hill and waiting to speak to Duty Counsel. The Tenants testified the legal clinic had not returned their call. Taking in submissions from both parties at this hearing, I determined the adjournment was not to be granted. My reasons for denying this adjournment are as follows.

2. The Landlord's representative objected to the adjournment due to the prejudice an adjournment would cause the Landlords as the Landlords child intends to move into the unit as soon as possible. The Landlords claimed the Tenants had more than enough time to secure representation and prepare for a hearing which was straight forward in nature and that all evidence had been disclosed in a package to the Tenants 8 days before the hearing on February 27, 2022.
3. Section 183 of the Residential Tenancies Act, 2006 (the 'Act') states that the Board shall adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter.
4. I find that the Tenants received adequate notice of the hearing and had a reasonable opportunity to obtain legal representation including several attempts to draw Duty Counsel into the hearing room by the moderator. Both sides were present at the hearing and the Tenants had received the Landlords' evidence 7 days before the hearing in accordance with LTB Rule of Procedure 19. I am therefore satisfied that the Tenants had an adequate opportunity to know the issues and be heard on the matter.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of June 30, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On June 8, 2022, the Landlords gave the Tenants an N12 notice of termination with the termination date of August 31, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's child, Simrit Singh for a period of at least one year.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - (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,
 - (c) a child or parent of the landlord or the landlord's spouse

- (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 Tenants over 60 days' notice and the termination date is the day a period of the tenancy ends.

Good Faith

6. I find that the Landlords in good faith requires possession of the rental unit for the purpose of his child's 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 the unit is a single family home with 5-bedroom and 5-bathrooms and that his child, Samrit Singh requires the unit for at least one year.
10. The Landlord's child Simrit Singh testified she currently lives with her husband in her husband's parents' home and intends to reside in the unit for a two to three years as she requires more space for starting a family. Ms. Singh further testified the unit is close to her work and paying rent to her father will allow her to raise a family within her family's budget.
11. The Tenant, Elaine Ferguson, alleged the Landlords being realtors, their true motive for issuing the notice of termination is to sell the home. The Tenant testified that the Landlords visited the home on May 30, 2022 and asked questions about maintenance issues, asked to increase the rent, spoke about subdividing the property and were intimidating in their approach.
12. The Tenant further testified that she asked the Landlords during a separate visit to the unit why they wanted to buy the home in the first place and the Landlord told her that it was for his child.

13. On cross examination, the Landlord did not deny that a long-term plan may include subdividing the lot into two or three different properties for him and other members of his family to eventually build additional homes on the expansive lot; however, this has nothing to do with the immediate plans for his child to move into the unit and reside there for a period of at least one year.
14. I have considered all the evidence and I find that the Landlords proved that it is more likely than not that they in good faith requires the rental unit for the purposes of residential occupation of his child for a period of at least one year. I attribute considerable weight to the testimony from Simrit Singh who provided testimony consistent with her affidavit signed June 19, 2022, that was submitted into evidence.

Compensation

15. 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”.
16. 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 August 31, 2022.
17. It is undisputed the Landlords compensated the Tenant \$3,100.00 by cheque via registered mail on August 29, 2022, an amount equal to one month's rent. The compensation was paid to the Tenant by the termination date, which in this case is August 31, 2022.
18. There is no last month's rent deposit.

Relief from eviction

19. 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.
20. The Landlord testified they require the unit as soon as possible.
21. The Tenant, Ms. Ferguson, testified she is a single mother with two 17-year-old children who are living with disabilities in their last year of high school. She further testified her children attend different schools and moving from the unit which is conveniently located nearby both schools would cause a disruption to their schooling. Ms. Ferguson further shared that in addition to the contributions from her roommate Ms. Niro, her primary source of income is the Child Tax Benefit along with supplemental income from teaching piano lessons; and, given the current housing market, it would be very challenging to find suitable and affordable housing for her family in such a short period of time.
22. I find that it would not be unfair to postpone the eviction until June 30, 2023. This will provide the Tenants with additional time to complete a housing search for an affordable

and suitable unit in the area as well as afford the Tenant's children the ability to complete the school year with minimal disruption.

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 June 30, 2023.
2. 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.
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 July 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$101.92 per day for the use of the unit starting March 7, 2023 until the date the Tenant moves out of the unit. This amount is less any rent that has already been paid to the Landlord by the Tenant.

May 9, 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 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.