



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

Citation: Cella v Farnum, 2023 ONLTB 35809

Date: 2023-05-09

File Number: LTB-L-033833-22

In the matter of: 810, 9 NORTHERN HEIGHTS DR RICHMOND
HILL ON L4B4M5

Between: Nadia Cella Landlord

And

Nina Farnum Tenant

Nadia Cella (the 'Landlord') applied for an order to terminate the tenancy and evict Nina Farnum (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 February 22, 2023.

The Landlord and the Landlord's Legal Representative Marian Lipka and the Tenant attended the hearing.

Preliminary Issue: (adjournment request denied)

1. The Tenant asked for an adjournment as she was not prepared for the hearing today, as she received the notice of hearing late, she never stated when she received it. Further, she wished to seek legal representation to assist her in contesting the N12. However, I noted that her rebuttal evidence was uploaded to the LTB Portal on February 15, 2023.

2. The Landlord's Legal Representative Ms. Lipa opposed the adjournment request. She stated the Landlord was prepared to proceed.
3. The Tenant filed a request to reschedule the hearing which was filed February 14, 2023. The Tenant did not obtain consent from the Landlord to reschedule. The request stated the Tenant was having health issues and 2 of her close relatives had been in the hospital. Ms. Farnum stated she did not know when she would received a notice of hearing to prepare accordingly. She stated she did not have any experience uploading documents and rules about the LTB. She does not have a smartphone, reliable computer, or internet service. She claims she was unable to find a paralegal for the upcoming hearing. When questioned who she had contacted for legal representation the Tenant admitted she was doing the

best she could, but her mind was preoccupied. The Board acknowledged to the Tenant that on her request to reschedule she had indicated February 22, 2023 as the hearing date.

4. The adjournment request was denied. The Tenant had submitted an online request to reschedule, even if she was assisted by someone because of her lack of experience with computers, it was filed with the LTB on February 14, 2023. I took into consideration from that date until the hearing date, the Tenant provided no evidence that she was actively looking for representation nor did she contact the Landlord in advance to get consent for an adjournment. She simply waited for the hearing date to make the request. When I questioned the Tenant about who she contacted for legal representation, she did not provide any names or phone numbers of who she had called. I took that latest date of February 14, 2023 until the hearing date of February 22, 2023, this gave the Tenant approximately 8 days to prepare for the hearing. I find any further delay would be prejudicial to both sides since the memories of potential witnesses or parties could fade. The parties deserve a resolution to the issues. As a result, the matter proceeded to a hearing.

Determinations:

5. The Tenant was in possession of the rental unit on the date the application was filed.
6. The Tenancy between the Landlord and the Tenant began on March 15, 2011.

N12 Notice of Termination

Landlord's Own Use

7. On May 31, 2022, the Landlord gave the Tenant an N12 notice of termination, it was deemed served by express post on June 5, 2022 with the termination date of August 31,

2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by her daughter Nicole Cella.

8. The Landlord in good faith requires possession of the rental unit for the purpose of their daughter's residential occupation for a period of at least one year.
9. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022. The Tenant admitted to receiving the compensation cheque.

Good Faith

10. The main issue to be determined is whether the Landlord has established that she in good faith require possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the Act.
11. Section 48 has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the Landlords' intention, nor the fact that the Landlords may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.)).
12. The Landlord testified she wishes her daughter to move into the rental unit currently being occupied by the Tenant. The Landlord drives her daughter to and from work. Ms. Nadia Cella stated by allowing her daughter to move into the rental unit it would reduce her driving time from an hour and half to a 15-minute drive.
13. Ms. Nicole Cella testified she is the daughter of the Landlord, Nadia Cella. She stated the rental unit is close to where she is currently working, which will cut down her mom's driving time from an hour and a half to 15 minutes, if needed she can take public transit given its one bus there and one bus back. She will occupy the rental unit for one year and will be content living close to her work, as it will relieve stress from her mom driving her Monday through Friday.
14. The Tenant testified that she believes the Landlord does not need the rental unit, they are able parents who could give their daughter another home. The Landlord could survive without this home, but she cannot, she does not know if she can find a new rental unit. The Tenant gave no evidence to refute the testimony of the Landlord's with respect to the intention for requiring possession of the rental unit in Good Faith.

Analysis

15. The main reason the Landlord needs the rental unit is for her daughter. Nicole Cella testified moving closer to her work would cut down her mothers driving time considerably, and if needed she can take public transit. The Tenant may not be happy about the Landlord wanting the rental unit and maybe upset about leaving the rental unit after being there for over 11 years. However, the Tenant did not provide any evidence to show the Landlord gave the N12 notice in bad faith. I am satisfied therefore that Nicole Cella genuinely intends to occupy the rental unit for her own use for at least 12 months. I therefore find that the Landlord has a good faith intention to possess the rental unit for the purpose of residential occupation for at least 12 months.
16. I asked both parties on submissions on eviction. The Landlord position was they would support whatever timeframe the Board considers in the circumstances.
17. The Tenant requested the Board consider a delayed eviction of 12 months. Ms. Farnum stated she has had many health issues and has no where else to go. She has been checking everyday for places around the area but cannot afford a new place. She has been living at this rental unit for over 11 years, her life has been a nightmare and she fears someone may attack her.
18. 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 9, 2023 pursuant to subsection 83(1)(b) of the Act. I find the proposal from the Tenant side of 12 months to be excessive. That would be over 21 months from the termination date of August 31, 2022 originally provided to the Tenant in the N12 Notice.

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 9, 2023.
2. If the unit is not vacated on or before June 9, 2023, then starting June 10, 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 June 10, 2023.

May 9, 2023

Date Issued

Anthony Bruno

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 December 10, 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.