



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

Citation: Rahimi shahmirzadi v Mossavian jandaghi, 2023 ONLTB 32503

Date: 2023-04-26 **File Number:**
LTB-L-039426-22-RV

In the matter of: 222 ROMFIELD CIRCT
THORNHILL ON L3T3J3

Between: Lili Ataie Landlords
M ohammadreza Rahimi Shahmirzadi

And

Farrokh Roozbehi Tenants Nastaranossadat Mossavian Jandaghi

Review Order

Lili Ataie and mohammadreza Rahimi shahmirzadi (the 'Landlords') applied for an order to terminate the tenancy and evict Farrokh Roozbehi and Nastaranossadat Mossavian jandaghi (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 resolved by order LTB-L-039426-22 issued on March 23, 2023.

On March 23, 2023, the Tenants 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-039426-22-RV-IN was issued, staying the order issued on March 23, 2023.

This application was heard in by videoconference on April 13, 2023.

The Landlords, Lili Ataie, the Landlords's Representative, Alireza Hesami, the Tenants and the Tenantss' Representative, B. Bilisi attended the hearing.



Determinations:

Review:

out of

1. The Tenants testified they did not receive the Notice of Hearing until after the hearing on March 9, 2023 took place.
2. On the basis of the submissions made in the request, I am satisfied that there is a serious error in the order or that a serious error occurred in the proceedings and that the Tenants were not reasonably able to participate in the proceeding.
3. The Board emailed the Landlord the Notice of Hearing on January 25, 2023, and despite including the Tenants' e-mail addresses on the application the Board mailed the Notice to the Tenants on February 23, 2023. The Tenant testified they checked their mailbox on February 27, March 4 and 13, 2023 and did not find the Notice until March 17, 2023 in their mailbox. The Landlord did not communicate or disclosure evidence to the Tenants in advance of the hearing that would have alerted the Tenants about the proceedings.
4. Pursuant to section 191(2) of the *Residential Tenancies Act, 2006 (the 'Act')*, a notice is "deemed validly given if it is proven that its contents actually came to the attention of the person from whom it was intended within the required time period". Section 191(3) of the Act also states a notice given by a mail shall be deemed to have been given on the fifth day after mailing. Given the Notice was mailed very close to the hearing date, the possibility of delay with Canada Post service, and the Tenant's testimony that she didn't receive the Notice before the hearing, I granted the Tenant's request to review the order issued on March 23, 2023. There's also no dispute the Order issued on March 23, 2023 contained a serious error with respect to the per diem compensation calculations because the Tenants had paid all their rent owing to March 30, 2023.

N12 Notice:

1. The N12 Notice given to the Tenants properly identifies the whole house as the rental unit and I find the N12 Notice is a valid notice of termination.
2. The Landlords met the requirements of section 72(1)(a) of the *Residential Tenancies Act, 2006 (the 'Act')*. A declaration by the Landlords' child, in accordance with Section 72(1)(b) of the Act, was provided which also satisfied that the requirements of section 72(1)(a) which certifies the length of time in which she in good faith requires the unit for her own personal use for a minimum period of one year.



3. The Landlords' have paid the Tenant's one month rent before September 30, 2022 and has complied with section 48.1 of the Act.
4. The Landlord persuaded me that she in good faith requires possession of the rental unit for the purpose of residential occupation for her child, Maryam Rahimi Shahmirzadi,.
5. In *Salter v. Beljinac*, [2001] O.J. No. 2792 (Div. Ct.) ('*Salter v. Beljinac*'), the Divisional Court ruled that the "good faith" requirement simply means that the landlord, or person identified in the notice of termination and affidavit, sincerely intends to occupy the rental unit. In this case, the evidence adduced at the hearing proves, on a balance of probabilities, that the Landlord's child sincerely intends to occupy the rental unit for residential purposes for at least one year.
6. 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.
7. The Tenant requested to stay in the unit until August 31, 2023 which is not reasonable, however since the Landlords' child is renting a unit in Toronto, the earliest date her tenancy could lawfully terminate by written notice is June 30, 2023. As such, I find it would not be unfair to postpone eviction to allot the Tenants some additional time to find alternate affordable accommodations in the community which has been very difficulty. This will also allow the Tenants' child to finish the school year at her current school.

Deposit:

8. The last month rent deposit the Tenants paid to the Landlord cannot be applied to any other rent period except the last rental period of the tenancy as per section 106 of the Act. Despite any agreement or waiver to the contrary, the Act prevails (Section 3 of the Act). As such the deposit will be applied to the Tenants' June 2023 rent charges.

It is ordered that:

1. The request to review order LTB-L-039426-22 issued on March 23, 2023 is granted.
2. Order LTB-L-039426-22 is cancelled and replaced as follows:
3. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before June 30, 2023.
4. The Landlords' shall apply the last month rent deposit to the Tenants' June 2023 rent charges which is the last month of the tenancy.



5. The Tenants shall pay the Landlord compensation of \$105.21 per day for the use of the unit starting July 1, 2023 until the date the Tenant moves out of the unit.
6. 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.
7. 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.

April 26, 2023

Date Issued

Sandra Macchione

Member, Landlords and Tenants 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.