



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

Citation: Zantingh v English, 2023 ONLTB 31317

Date: 2023-04-20

File Number: LTB-L-028187-22

In the matter of: 4432 LONDON LINE
WYOMING ON NON 1T0

Between: Peter Zantingh Landlord

And

Bob English Tenant

Peter Zantingh (the 'Landlord') applied for an order to terminate the tenancy and evict Bob English (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 February 6, 2023 at 11:17 a.m.

The Landlord Peter Zantingh and the Tenant Bob English attended the hearing.

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 June 20, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord is holding a rent deposit of \$750.00.

N12 Notice of Termination

4. On May 17, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of July 31, 2022. The Landlord claims that they require vacant possession

of the rental unit for the purpose of residential occupation for him, his fiancé and four children.

5. 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,

(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.

6. 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

7. I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by the Landlord and his family for a period of at least one year.

8. 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...”

9. 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”.

10. The Landlord testified this is a 3-bedroom single-family home with approximately 2,000 square feet of space. The Landlord explained his current unit is 1,200 square feet and he requires additional space for his growing family.

11. The Landlord testified he intends to live in the unit for a period of 2 to 5 years. The Landlord also signed a Declaration on May 18, 2022, stating that he intends to move into the unit in good faith for a period on at least one year.

12. Based on all of the evidence submitted by the Landlord, I find that the Landlord established that it is more likely than not that the Landlord and his family in good faith require the rental unit for the purposes of residential occupation for a period of at least one year.

Compensation

13. Section 49.1 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 49”.
14. Section 55.1 of the Act requires that compensation under section 49.1 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 July 31, 2022.
15. The Landlord testified that compensation was provided to the Tenant on July 30, 2022, at 2:00 p.m. He knocked on the Tenant’s door with the intention of physically handing the cheque to the Tenant; however, since there was no answer, he left the compensation cheque \$791.18, equal to the lawful monthly rent, in the mailbox. This amount corresponds with the compensation amount listed in the Application. The Landlord confirmed the cheque had yet to be cashed as of the date of the hearing.
16. The Tenant testified he did not receive the cheque. The Tenant did acknowledge he typically receives his mail through this mailbox and received the N12 in this manner.
17. Based on all of the evidence submitted, I am persuaded by the detailed testimony of the Landlord that it is more likely than not compensation equal to one month’s rent was provided to the Tenant by the N12 termination date.

Relief from eviction

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act until June 20, 2023.
19. The Tenant testified he suffers from health conditions that limit his physical mobility and that this will impact his ability to complete a timely housing search. The Tenant further testified he is currently not working with his primary income sources being Ontario Works and compensation being received through the Workplace Safety Insurance Board; such that, finding a suitable and affordable unit will be challenging. Due to these factors, the Tenant requested the eviction be delayed up to 60 days.
20. The Landlord did not dispute the difficult rental market and the Tenant’s personal circumstances and consented to delaying the eviction up to 60 days.

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 20, 2023.
2. If the unit is not vacated on or before June 20, 2023, then starting June 21, 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 21, 2023.
4. The Landlord shall re-issue a cheque to the Tenant for \$791.18 by April 30, 2023.
5. As of the date of the hearing, the amount of the rent deposit (\$750.00) and interest (\$120.25) the Landlord owes on the rent deposit is \$870.25.
6. However, the Landlord is authorized to deduct from amount owing to the Tenant for last month's rents and \$26.01 per day for compensation for the Tenant's use of the unit starting February 7, 2023 to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

2023 ONLTB 31317 (CanLII)

April 20, 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 December 14, 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.

