



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

Citation: Yi v Scharf, 2023 ONLTB 30965

Date: 2023-04-17

File Number: LTB-L-047561-22

In the matter of: 225 BELMONT ST
CORNWALL ON K6H4Z5

Between: Xiu Yi Landlord

And

Nikki Scharf Tenant

Xiu Yi (the 'Landlord') applied for an order to terminate the tenancy and evict Nikki Scharf (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 April 3, 2023.

Only the Landlord and the Landlord's Legal Representative Jiangning Guo attended the hearing.

As of 9:27 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. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The tenancy between the Landlord and the Tenant will be terminated.
2. On August 15, 2022 the Landlord gave the Tenant an N12 notice of termination for landlord's own use. The termination date on the N12 notice is October 31, 2022.
3. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') by filing with the Board a declaration stating that he personally requires the rental unit and certifying that he in good faith requires the rental unit for his own personal use for a period of at least one year.

4. Section 48.1 of the *Residential Tenancies Act*, 2006 (the 'Act') requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be provided no later than on the termination date specified in the notice of termination of the tenancy given by the landlord.
5. The Landlord's Legal Representative stated that she sent an email communication to the Tenant at nikkischarf@yahoo.ca and also mailed the email communication to the Tenant on September 27, 2022 indicating that rent for the month of October, 2022 would be waived as it would be compensation as required for the N12 notice of termination. The Landlord's Legal Representative submitted that the Tenant did not pay rent for the month of October, 2022 and did not respond to her communication.
6. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenant with one month's rent for the compensation required for the N12 notice by waiving rent for the month of October, 2022.
7. The next issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement pursuant to section 48(1) of the Act which states:

48(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 for a period of at least one year by,

(a) a landlord;

8. The onus is on the Landlord to establish that he, in good faith, requires the rental unit for the purpose of residential occupation and that the Landlord genuinely intends to move into the rental unit.
9. The courts have provided much guidance to the Board in interpreting the "good faith" and "genuine intent" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
10. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".

11. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a

genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

12. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

13. In this case, the Landlord testified that he wants to live in the rental unit as it is a bungalow which will make it easier for his elderly mother who will reside in the rental unit with the Landlord as well.
14. The Landlord provided clear and consistent evidence that he intends to move into the rental unit for at least one year. On the basis of the uncontested evidence and submissions before me, I have no reason to doubt the truthfulness of the Landlord's testimony or his good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for his own residential occupation and that he genuinely intends to reside in the unit for at least one year.
15. The Landlord was not aware of any factors to consider with respect to relief from eviction and asked for a standard order. 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.
16. This order contains all of the reasons within it and no further reasons will be issued.

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 April 30, 2023.

2. If the unit is not vacated on or before April 30, 2023, then starting May 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 May 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$38.14 per day for the use of the unit starting May 1, 2023 until the date the Tenant moves out of the unit.

April 17, 2023
Date Issued

Heather Chapple
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 1, 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.