



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

Citation: Rielhof v Rodgers, 2023 ONLTB 31355

Date: 2023-04-14

File Number: LTB-L-052839-22

In the matter of: Upper, 36 EUCLID AVE LONDON
ON N6C1C1

Between: Colt Rielhof Landlord

And

John Rodgers Tenant

Colt Rielhof (the 'Landlord') applied for an order to terminate the tenancy and evict John Rodgers (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 March 1, 2023.

The Landlord, the Landlord's representative D. Abraham and the Tenant 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 Tenant must move out of the rental unit on or before July 31, 2023.
2. The Landlord served the Tenant with an N12 notice of termination seeking termination of the tenancy for the purpose of residential occupation by the Landlord.
3. The termination date in the notice (the "N12 notice") was November 30, 2022. The Landlord has met the 60 day notice requirement of [s.48\(2\)](#) of the [Act](#), and I am satisfied that the Landlord has met the declaration requirement of s.72(1)(b) of the Act and the one month's compensation requirement of s. 48.1 of the Act.
4. In order to be successful in this application, the Landlord must satisfy the Board that at the time of service of the N12 Notice, she required, *in good faith*, the rental unit for her own

use. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), the court clarified the Landlord's good faith requirement as follows:

In my view, s.51(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 **File Number:** LTB-L-052839-22

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.

5. I am satisfied that, on a balance of probabilities, the Landlord, in good faith, requires possession of the rental unit for the purpose of residential occupation.
6. The Landlord lives alone and testified the rental unit is better suited to her existing health challenges. The Landlord testified she has been taking medications for progressive balance/walking challenges. Although she does not have a formal medical diagnosis, she described her physical challenges as experiencing numbness in her feet and at a times, being unable to feel her feet. The Landlord's existing residence, located on a 1-acre lot and containing multiple sets of stairs, is no longer suitable given her physical limitations. In contrast, the rental unit contains only one set of stairs at the entranceway and is located entirely on one floor and within the city (unlike her current residence). The Landlord testified she intends to install a second handrail on the entranceway.
7. The Tenant challenged the Landlord's professed intent, stating he was informed in August 2022 that the Landlord intended to sell the rental unit. The Landlord does not deny previously contemplating selling the rental unit and buying a one-floor home, but indicated that upon further reflection in light of rising interest rates and the overall market, she decided in September 2022 that it would be best to move into the rental unit.
8. The Tenant further questioned why he – or the Landlord – could not move into an identical, vacant basement unit in the residential complex. The Landlord, in response, indicated the vacant basement unit is not suitable as she is very sensitive to temperature and in addition to being damp, the basement unit needs work. She indicated she does not plan to rent out the basement unit. The Tenant acknowledged the Landlord has seen the rental unit multiple times and testified the Landlord has mentioned her health issues to him for sometime. When the Tenant was asked whether he thought the Landlord would move into the rental unit, he stated he believed the Landlord would “move-in for a year” only.
9. Upon considering the parties' testimony, including the Landlord's familiarity with the property and the Landlord's expressed reasons for moving into the rental unit, I am satisfied with the Landlord's expressed intent.

Section 83

10. Section 83 requires that the Board consider all the circumstances in the case, including the Tenant's and the Landlord's situations, to determine if it would be appropriate to delay or deny eviction in the form of section 83 relief.
11. The Tenant lives alone and indicated he is a senior on a fixed income. He testified he has completed numerous housing applications without success, and has lived at the rental unit approximately 5 years.
12. The Landlord proposed a termination date of March 31 or alternatively, April 30, 2023, noting the Tenant has been given notice of the Landlord's intention to move into the rental unit for some time.
13. The Tenant noted he has encountered lengthy housing wait lists and expressed concern and challenges finding alternative accommodations within his price budget. He indicated he would have difficulty finding alternative accommodations on or before the Landlord's proposed termination of tenancy timeline of March 31 - April 30, 2023.
14. I have considered all of the disclosed circumstances of the Tenant and Landlord in accordance with [subsection 83\(2\)](#) of the Act. While I am sympathetic to the Landlord's health situation and reasons for wanting to move into the rental unit, the Landlord does at least have housing options and when balanced against the Tenant's noted challenges in finding alternative accommodations, I find it would not be unfair to postpone the eviction until July 31, 2023 pursuant to [subsection 83\(1\)\(b\)](#) of the [Act](#).

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 July 31, 2023.
2. If the unit is not vacated on or before July 31, 2023, then starting August 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 August 1, 2023.

April 14, 2023

Date Issued

Peter Nicholson

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 February 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.