



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

Citation: Etim Akpan and Chinyere Onychi c/o Elite Property Mgmt Inc v Grimme, 2023 ONLTB 28882

Date: 2023-04-14

File Number: LTB-L-046279-22

In the matter of: 122 PEACH BLOSSOM CRES
KITCHENER ON N2E3Z7

Between: Etim Akpan Landlords
Chinyere Onychi
c/o Elite Property Mgmt Inc

And

Michael Grimme Tenant

Etim Akpan and Chinyere Onychi c/o Elite Property Mgmt Inc (the 'Landlords') applied for an order to terminate the tenancy and evict Michael Grimme (the 'Tenant') because:

- the Landlords 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 23, 2023.

Only the Landlord Chinyere Onychi and the Landlord's Legal Representative Daniel Abraham attended the hearing.

As of 11:04 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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated April 25, 2023.
2. This L2 application seeks the eviction of the Tenant because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year's time.
3. The Tenant was in possession of the rental unit on the date the application was filed.

4. On June 17, 2022, the Landlords personally served the Tenant an N12 notice of termination with the termination date of August 31, 2022.
5. The Landlords filed a declaration with the Board in accordance with sections 71.1 and 72(1) of the *Residential Tenancies Act, 2006* (the Act).
6. The Landlords paid the Tenant the compensation required under section 48.1 of the Act by the termination date.

Good Faith

7. Section 48 of the Act 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 landlord's intention, nor the fact that the landlord 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.))
8. The Landlord Chinyere Onychi testified that her family has outgrown their current residence. The family currently resides in a three bedroom town home with her husband, two children and her mother in law. Her sons share a room and her mother in law occupies a bedroom while she and her husband have the remaining bedroom.
9. The Landlords' evidence is the rental unit is larger and would be a better fit for her family. The kitchen space is larger at the rental unit than where they currently live. It has a basement and a larger outer space. Her sons will be able to have their own room while an in-law suite can be fashioned for her mother in law in the basement. Ms. Onychi testified the additional outdoor space will allow her sons to practice soccer which they play competitively.
10. Based on the uncontested evidence, I find on a balance of probabilities that the Landlords genuinely intend to live in the rental unit with their family for a period of at least one year with. Nothing in the Landlords' evidence seemed illogical or implausible. I found the Landlords' evidence to be reasonable and believable. As a result, I find the N12 Notice was served in good faith.

Section 83 Considerations.

11. The Tenant did not attend the hearing to present any evidence or submissions in support of granting relief from eviction. The Landlords filed their application on August 18, 2022 and has been waiting over six month's time to move their family into the larger space the rental unit provides. I asked the Landlords if they were aware of any circumstances the Tenant may be experiencing that would make eviction unfair. They were aware of none.

12. 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.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 25, 2023.
2. If the unit is not vacated on or before April 25, 2023, then starting April 26, 2023, the Landlords 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 Landlords on or after April 26, 2023.

April 14, 2023

Date Issued

John Cashmore

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 October 26, 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.