



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

Citation: Di Mauro v Francisco, 2023 ONLTB 31080

Date: 2023-04-13

File Number: LTB-L-033278-22

In the matter of: 2, 29 ORPINGTON CRES WEST
TORONTO ON M9V 3E2

Between: Danny Di Mauro Landlord

And

Pedroche Francisco Tenant

Danny Di Mauro (the 'Landlord') applied for an order to terminate the tenancy and evict Pedroche Francisco (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 February 22, 2023.

Only the Landlord's representative Mansi Parmar, licensed paralegal attended the hearing.

As of 10:58, 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. 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 April 24, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On April 22, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord's son Domenic Di Mauro.
4. 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,

(c) a child or parent of the landlord or the landlord's spouse

(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.

5. 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

6. I find that the Landlord in good faith requires possession of the rental unit for the purpose of their mother's residential occupation for a period of at least one year.

7. 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...”

8. 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”.

9. The Landlord's representative submitted this is a single family home with 2-units. The Landlord occupies the main floor and the Tenant occupies the basement. The Landlord's son requires vacant possession of the basement unit for a period of at least one year.

10. The Declaration, signed June 17, 2022 by Domenic Di Mauro confirms same and provides the rationale that he recently lost his job, is in financial distress and requires the unit because he has no other options as his savings are depleted.

11. Based on all of the evidence submitted by the Landlord, I find that the Landlord proved that it is more likely than not that his son Domenic Di Mauro in good faith requires the rental unit for the purposes of residential occupation for a period of at least one year.

Compensation

12. 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”.

13. 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.

14. The Landlord's representative submitted that compensation was provided to the Tenant on May 18, 2022, in the amount of \$526.24, an amount equal to the lawful monthly rent. Rent is paid weekly and this amount was calculated as follows (\$131.56 weekly x4 weeks). The cheque has been cashed. This amount corresponds with the compensation amount listed in the Application.
15. Based on all of the evidence submitted by the Landlord, I find that the Landlord proved that it is more likely than not compensation was provided to the Tenant.

Relief from eviction

1. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
2. There is no rent being held on deposit.

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 24, 2023.
2. If the unit is not vacated on or before April 24, 2023, then starting April 25, 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 April 25, 2023.

April 13, 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 October 25, 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.