



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

Citation: Robbins v Cusson, 2023 ONLTB 31077

Date: 2023-04-13

File Number: LTB-L-032177-22

In the matter of: Unit #3, 523 LASALLE BLVD
SUDBURY ON P3A 1X1

Between: George Robbins Landlord

And

Carrie-lynn Cusson Tenant

George Robbins (the 'Landlord') applied for an order to terminate the tenancy and evict Carrie-lynn Cusson (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 22, 2023.

Only the Landlord George Robbins and his legal representative Michael Brown attended the hearing.

As of 11:23 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. 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 May 26, 2022, the Landlord gave the Tenant an N12 notice of termination by hand 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 by the Landlord's mother Donna Robbins.
4. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):

2023 ONLTB 31077 (CanLI)

(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 testified this is the upper unit of a 3-unit property and he requires vacant possession of the unit for his aging mother, Donna Robbins. While the basement unit is vacant it is earmarked for the Landlord's sister who intends to move in to be able to provide care to their mother. The Landlord further testified the amenities and location are well-suited for his mother as the upper unit is accessible with a stair lift for his mother's future use and the location is conveniently located around the corner from his home, the doctor's office, shopping and groceries.

10. Donna Robbins testified that she intends to move into the rental unit for more than one year. She is moving from Pelham, Ontario to Sudbury, Ontario because the living arrangement will allow her to be close to her son and close to her family members who will be able provide her with regular care. Mrs. Robbins submitted a signed declaration supporting her testimony.

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 mother Donna Robbins 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 testified that compensation was provided to the Tenant on June 1, 2022, in the amount of \$1200.00, an amount equal to the lawful monthly rent.
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

16. 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.
17. 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.