



Order under Section 69 Residential Tenancies Act, 2006

Citation: Romano v Smith, 2023 ONLTB 30455

Date: 2023-04-11

File Number: LTB-L-042634-22

In the matter of: 3, 420 SECOND LINE W
SAULT STE. MARIE ON P6C2J7

Between: Nicole Romano Landlord

And

Jacqueline Smith Tenant

Nicole Romano (the 'Landlord') applied for an order to terminate the tenancy and evict Jacqueline Smith (the 'Tenant') because the Tenant did not pay the rent that the Tenant owes (L1 application).

The Landlord also applied for an order to terminate the tenancy and evict 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 (L2 application).

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 March 22, 2023.

Only the Landlord and the Landlord's representative Nathan Chevalier attended the hearing.

As of 10:24 am, 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.

The Landlord served the Tenant with disclosure on March 16, 2023.

Determinations:

1. The tenancy between the Landlord and the Tenant will be terminated as of April 30, 2023, under the L2 application for the N12 notice of termination. The tenancy will terminate notwithstanding payments made for the voiding of the L1 application for arrears of rent.

The L1 Application- Arrears of Rent

2. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent

arrears owing by the termination date in the N4 Notice or before the date the application was filed.

3. As of the hearing date, the Tenant was still in possession of the rental unit.
4. The lawful rent is \$300.00. It is due on the 1st day of each month.
5. Based on the Monthly rent, the daily rent/compensation is \$9.86. This amount is calculated as follows: \$300.00 x 12, divided by 365 days.
6. The Tenant was compensated in the amount of \$300.00 by the Landlord in August 2022 as required when serving a N12 notice to terminate the tenancy.
7. The rent arrears owing to March 31, 2023 are \$3,000.00.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. There is no last month's rent deposit.
10. The Landlord testified that the Tenant was offered a payment plan but the Tenant did not respond.
11. The Landlord said there are no children residing in the rental unit and is unaware of any further circumstances or reasons to delay or deny eviction.
12. The Tenant did not attend the hearing to testify nor defend their position.
13. 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 whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

The L2 Application – N12 Notice of Termination

14. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy shall be terminated as detailed below.
15. On June 16, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
16. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022 by waiving the rent for August 2022.
17. The rental unit is one bedroom in a single family home. The other Tenants vacated the residential complex. The Landlord nor family reside at the residential complex.
18. The Landlord has no knowledge of when the tenancy began. The Landlord purchased the property around April 14, 2022. The Landlord said this Tenant was the only remaining Tenant in possession when the purchase closed. The Landlord acknowledged that despite

the agreement, contingent on vacant possession, she proceeded with closing the purchase.

19. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement set out in s.48(1) of the Act which provides:

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) the landlord;

The Landlord’s Good Faith Intention:

20. The onus is on the Landlord to establish that the Landlord in good faith require the rental unit for the purpose of residential occupation.

21. In the leading case law involving a landlord’s own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), 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...

22. Thus, the Landlord must establish that they genuinely intend to use the rental unit as detailed in the N12 notice. The Court also held in *Salter* that the Landlord’s motives are “largely irrelevant”.
23. It was the uncontested testimony of the Landlord that she purchased the house with the intention of moving in for no less than 5 to 10 years. She said she currently lives with her parents, is 28 years old and wants to move into the residential complex she purchased to live independently and start her own life. This home is also closer to her place of employment.
24. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord’s testimony. I am therefore satisfied on a balance of probabilities that the Landlord, in good faith, require possession of the rental unit for the purpose of residential occupation and that she intends to reside in the rental unit for a period of one year.
25. Accordingly, the tenancy shall be terminated.
26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of April 30, 2023. 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 pay to the Landlord \$3,186.00. This amount includes rent arrears owing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.
5. The Tenant shall also pay the Landlord compensation of \$9.86 per day for the use of the unit starting March 23, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 23, 2023 at 6.00% annually on the balance outstanding.

April 11, 2023
Date Issued

Dana Wren
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 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.

Amount the Tenant must pay as the tenancy is terminated

Rent Owing To Hearing Date	\$3,000.00
Application Filing Fee	\$186.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- 0.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$0.00
Total amount owing to the Landlord	\$3,186.00
Plus daily compensation owing for each day of occupation starting March 23, 2023	\$9.86 (per day)

2023 ONL TB 30455 (CanLII)