



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

Citation: Langari v Rathbone, 2023 ONLTB 29451

Date: 2023-04-07

File Number: LTB-L-043818-22

In the matter of: Basement, 146 WEST 32ND ST
HAMILTON ON L9C5H2

Between: Farah Langari Landlords
Hamid Esnaashari

And

Jesse Rathbone Tenant

Farah Langari and Hamid Esnaashari (the 'Landlords') applied for an order to terminate the tenancy and evict Jesse Rathbone (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 22, 2023 at 09:00 am.

The Landlord Representative Elaine Page, the Landlords, the Tenant Representative Karen Byfield and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlords has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 30, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served on the same date with the termination date of October 14, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.
4. The Landlord has compensated the Tenant an amount equal to one month's rent on August 08, 2022.
5. The Landlord collected a rent deposit of \$1,100.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from September 8, 2017.
6. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Good faith

7. On the basis of the sworn declaration filed with the Board and the Landlord's testimony, I find that the Landlord's genuinely intends to move into the rental unit after the Tenant vacates and therefore in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.
8. The Landlords testified that they had bought the rental property in February 2022 as an investment but as of August 22, 2022 their financial situation had changed and they now require possession for their own use. They also testified that they became aware that the rental property, which is currently divided into two separate rental units, is in fact zoned as a single-family dwelling. They intend to move into the rental property, live on the main floor and utilize the lower unit as a work from home office and recreation room.
9. The Tenant testified that it was their belief that the Landlord had served the N12 Notice in bad faith. They based this submission on the fact that it was their understanding from conversation with the previous Landlord following the sale that the current Landlords were going to keep it as a rental property. They also testified that they are on disability and the current rent is \$1,058.00 whereas other comparable properties range from \$1,800.00 to \$2,000.00 which would be significantly outside of their affordable range.
10. The Tenant Representative then submitted that the Landlords owned several other properties and had already renovated the main floor and suggested it was the Landlords' intent to renovate the basement unit so that they may rent in out at a higher rate and that the N12 Notice was issued to frustrate the Tenant into leaving. In support of this claim the Tenant Representative submitted several pictures of the flooring in the basement unit.
11. Based on the circumstances and evidence before me I am satisfied on the balance of probabilities that the Landlord has established a genuine intent to move into the rental unit for at least one year. While the Tenant asserted that the previous Landlord told the Tenant that the current Landlord had expressed an intent to keep the unit as a rental unit, I accept the Landlord's evidence that their situation changed. Likewise, the Tenant Representatives assertion that the Landlord intends to rent out the rental unit for a higher rent was supported only by a series of pictures of damaged flooring, which the Tenant acknowledged only became an issue within the last 5 months and could be raised as part of their own separate application.
12. If in fact the Landlords re-rent the unit after the Tenants vacate the Tenant may file at the Board a T5 application alleging bad faith.

Relief from eviction

13. 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 not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.
14. Specifically, the Tenant testified that they were currently on ODSP and the father of two small children that he had partial custody of. Accordingly, given these circumstances I am satisfied a brief delay in eviction is warranted to afford him more time to secure financing and find a new rental property.

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 May 31, 2023.
2. If the unit is not vacated on or before May 31, 2023, then starting June 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 June 1, 2023.
4. As of the date of the hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$1,100.00.
5. However, the Landlord is authorized to deduct from amount owing to the Tenant \$36.16 per day for compensation for the use of the unit starting March 23, 2023 to the date the Tenant moves out of the unit.
6. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

April 6, 2023
Date Issued

Kelly Delaney
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 December 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.