



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

Citation: Sekula v Gates, 2023 ONLTB 28805

Date: 2023-04-06

File Number: LTB-L-017748-22

In the matter of: 125 ROBERT ST
HAMILTON ON L8L2P7

Between: Malgorzata Sekula, Zbigniew Sekula Landlord

And

Graham Clarke Jackson Gates Tenant

Malgorzata Sekula and Zbigniew Sekula (the 'Landlord') applied for an order to terminate the tenancy and evict Graham Clarke and Jackson Gates (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 November 1, 2022.

The Landlords and the Landlord's Legal Representative, L. Barder and the Tenant, J. Gates attended the hearing.

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.
2. On January 17, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation.
3. One of the Landlord's Z. Sekula testified that he is currently living with his daughter sometimes, and sometimes he lives in his car. When he is with his daughter, he sleeps on a sofa in the living room. He is currently separating from his wife and requires the rental for residential occupation. Z. Sekula testified that he is a senior and he intends to reside in the rental unit for longer than a year.
4. The Tenant did not specifically contest the Landlord's intention to move into the rental unit, except to mention that the Landlord owns other properties. However the Tenant testified

that he believes the Landlord is in breach of their obligations under the Act, and as such, the eviction should be refused. This will be discussed below.

5. Based on the evidence before me, on a balance of probabilities, I find that the Landlord, in good faith, intends to move into the rental unit for a period of at least one year. The Landlord testified that he is currently residing with his daughter sometimes and in his car sometimes, and that he is separating from his wife and requires the rental unit to live in. I accept the Landlord's testimony.

Section 83.3 (a) – Mandatory Refusal of Eviction

6. Section 83.3 (a) states:

Circumstances where refusal required

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

7. The Tenant testified that the Landlord is in serious breach of their maintenance obligations and testified that the issues are as follows:

- (a) Fencing around the property is in disrepair
- (b) No insulation in the house
- (c) Heat pump needs to be replaced
- (d) No heat source in the bathroom
- (e) Black mold in the grout of the stand up shower

8. In order to engage the mandatory refusal of eviction under subsection 83 (3) (a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing. Even if the allegations by the Tenant are true, I am not satisfied that they constitute a serious breach of the Act so as to trigger mandatory relief from eviction. I come to this conclusion based on the Tenant's description of each issue. Although what the Tenant describes could arguably be breaches of the Act, they do not rise to the level of serious breach as required to engage mandatory refusal of eviction.
9. I want to be clear that there has been no determination on the merits during this hearing of any claims by the Tenant that the Landlord is in breach of any obligations under the Act. No evaluation of the existence or extent of any breach or whether a remedy is warranted has been made. Those claims are the subject of the Tenant's application to be heard on another day.

Relief from Eviction

10. The Tenant testified that he has been looking for other places to live, however he has had no luck. He testified that he is undergoing a lot of medical treatment for both physical and mental health issues while still working and that has added to the difficulty of finding a new

place to live. He testified that he would need at least a few months to find a new place to live. He has resided in the unit since June 2020.

11. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act. Given the delay in issuing this order, no further delay is warranted.
12. The Landlord has compensated the Tenant an amount equal to one month's rent by March 31, 2022.
13. The Landlord collected a rent deposit of \$1,080.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$19.39 is owing to the Tenant for the period from May 5, 2020 to November 1, 2022.
14. 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.

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 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.

April 6, 2023
Date Issued

Emily Robb
 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 30, 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.