



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

Citation: Duval v Charlebois, 2023 ONLTB 26433

Date: 2023-04-03

File Number: LTB-L-040110-22

In the matter of: 1, 234 YONGE ST
MIDLAND ON L4R2A9

Between: Kevin Ellis Landlords
Paul Duval
William Duval

And

Richard Charlebois Tenant

Kevin Ellis, Paul Duval and William Duval (the 'Landlords') applied for an order to terminate the tenancy and evict Richard Charlebois (the 'Tenant') because:

- the Landlords have entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 9, 2023.

Only the Landlord William Duval, the Landlords' witness Brandon Chambers and the Landlords' Legal Representative K. Scott attended the hearing.

As of 10:30 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB.

On March 7, 2023, the Tenant submitted to the Board a copy of the Notice of Hearing with a added line stating that he was unable to attend due to 'Heart Disease Health problem', a copy of

the N12 notice and copies of some rent cheques and a blank Accommodation Request under Human Rights Code. There were no medical notes or details attached with the email.

The Tenant did not request and was not granted an adjournment before the hearing, and he was not present at the hearing to request an adjournment. I do not find that the written submission made by the Tenant contains sufficient details to warrant an adjournment. As a result, the hearing proceeded with only the Landlords' evidence.

Determinations:

1. As explained below, the Landlords 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 is terminated as of May 30, 2023 and the Tenant shall pay to the Landlords \$2,658.06 as daily compensation.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On June 30, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served on the same day with the termination date of August 31, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by himself.

Good Faith

4. For the reasons set out below, I find the Landlords in good faith requires possession of the rental unit for the purpose of the purchaser's residential occupation.
5. William Duval (WD) testified that the property was sold on July 6, 2021 with a closing date of October 4, 2021. The purchaser signed an affidavit that he requires vacant possession of the property for his own residential occupation for at least one year. The Agreement of purchase and sale also states that the purchaser requires vacant possession. There are two units in the property and the other unit has been vacated.
6. WD also testified that they haven't been able to close the sale and have been extending the closing by a month at a time due to the Tenant not vacating. This has caused Landlords substantial difficulties.
7. Landlord's witness Brandon Chambers (BC) testified that he is the purchaser for the rental unit and at the time of sale he was renting with a friend, and he gave a notice to vacate excited to move into his own house but since the Tenant has not vacated the rental unit he has had to move into his parent's house. He is currently living in his parents' family room with a curtain to maintain personal space and has lived like that since October 2021.
8. Landlords served a previous N12 which was dismissed by the Board as defective, so they had to start all over again, making this a long-drawn sale pending since October 2021.

Analysis

9. The N12 was served pursuant to section 49 of the Residential Tenancies Act, 2006 (Act). Section 49(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 notice, the purchaser required, in good faith, the unit for residential use
10. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
11. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per *Salter*, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."
12. I found BC's testimony to be credible and reliable and I accept his testimony that he genuinely intends to occupy the rental unit.
13. Based on the uncontested evidence, I find that the Landlords proved that it is more likely than not that the purchaser in good faith requires the rental unit for the purposes of residential occupation. Specifically, I accept that BC genuinely intends to move into the rental unit once the Tenant vacates.

Compensation

14. Section 49.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the purchaser, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 49.1 of the Act.
15. The Landlords has compensated the Tenant an amount equal to one month's rent by August 31, 2022 by sending back a rent cheque for July 2021 on July 18, 2021.
16. The Tenant was required to pay the Landlords \$3,747.95 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to March 9, 2023. The Landlords failed to discuss at the hearing, if the Tenant is up to date on his rent

payments. Hence any rent that has been paid by the Tenant till the date he moves out of the rental unit must be deducted from the compensation claimed.

17. Based on the Monthly rent, the daily compensation is \$19.73. This amount is calculated as follows: \$600.00 x 12, divided by 365 days.
18. The Landlords collected a rent deposit of \$600.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$165.39 is owing to the Tenant for the period from January 1, 2007 to March 9, 2023 .
19. 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

Relief from eviction

20. 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 30, 2023 pursuant to subsection 83(1)(b) of the Act. I am giving the Tenant extra time since this is a long-standing tenancy, and the delay will give the Tenant adequate time to find another suitable accommodation.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 30, 2023.
2. If the unit is not vacated on or before May 30, 2023, then starting June 1, 2023, the Landlords 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 Landlords on or after June 1, 2023.
4. The Tenant shall pay to the Landlords \$2,982.56, which represents compensation for the use of the unit from September 1, 2022 to March 9, 2023, less the rent deposit and interest the Landlords owes on the rent deposit. The Landlord shall also deduct any rent payments received from the Tenant after September 1, from this amount.
5. The Tenant shall also pay the Landlords compensation of \$17.10 per day for the use of the unit starting March 10, 2023 until the date the Tenant moves out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before May 30, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding.

April 3, 2023

Date Issued

Sheena Brar

Member, Landlords 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 5, 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.