



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

**Citation:** Martel v D'avignon, 2023 ONLTB 28025

**Date:** 2023-03-31

**File Number:** LTB-L-040300-22

**In the matter of:** 38 FROBEL DR  
ELLIOT LAKE ON P5A3A2

**Between:** Nicole Martel Landlord

**And**

Frank D'avignon Tenant

Nicole Martel (the 'Landlord') applied for an order to terminate the tenancy and evict Frank D'avignon (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 March 9, 2023.

The Landlord and the Landlord's Legal Representative M. Laderoute attended the hearing.

**Tenant's attendance:**

1. The hearing was scheduled to start at 9:00 a.m. The Tenant logged into the hearing at 8:40 a.m. and asked for an adjournment due to a medical appointment he had to leave for at 9:15 a.m. The Tenant stated he could not miss the appointment as he received the notice for the medical appointment in December 2022 and has waited a long time for it. He further mentioned that he received the Notice of Hearing on Friday March 3, 2023.

2. Prior to the hearing the Tenant did not ask the Board to reschedule the hearing or inform the Landlord that he would be seeking an adjournment. The Tenant states that did not get to speak to anyone at the Board to request an adjournment or send a written request since he doesn't have a computer.
3. I asked that the Tenant if he could participate in the hearing later in the day and he indicated that he wasn't sure about it.
4. I further suggested that as both parties were present I could begin hearing the application immediately as the Tenant had stated that he did not need to depart until 9:15 a.m. The Tenant appeared to be upset with this suggestion and before hung up at 8:42 a.m. before I was finished explaining this option. The Tenant did not dial back in and matter was heard on an uncontested basis at 10:22 a.m.

**Determinations:**

5. 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 is terminated as of April 30, 2023, and the Tenant shall pay to the Landlord \$2,658.06 as daily compensation.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On July 12, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on July 17, 2022, with the termination date of September 30, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation for herself.

*Good Faith*

8. For the reasons set out below, I find the Landlord in good faith requires possession of the rental unit for the purpose of her own residential occupation for a period of at least one year.
9. The Landlord testified that she purchased the property and the sale closed on May 27, 2022. She purchased the same so that she could move into the property herself for a period of at least 12 months.
10. The Landlord further testified that she currently lives in a rental unit in Milton, and she bought this property in Elliot Lake because it was affordable. She also added that she works from home indefinitely and it doesn't matter where she lives. She also has family and friends in the area and would like to build a home there.

*Analysis*

11. 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...”

12. 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”.

13. I found the Landlord's testimony to be credible and reliable and I accept her testimony that she genuinely intends to occupy the rental unit for a period in excess of one year.

14. Based on all of the uncontested evidence, I find that the Landlord proved that it is more likely than not that she in good faith requires the rental unit for the purposes of residential occupation. As explained above, the Board's role is not to assess the reasonableness of this intention.

*Compensation*

15. The Landlord has compensated the Tenant an amount equal to one month's rent by personally giving him a cheque on September 28, 2022.

16. The Tenant was required to pay the Landlord \$2,672.22 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to March 9, 2023. There was no evidence led at the hearing that the Tenant has not paid rent since October 1, 2022. However, any rent payments received from the Tenant from October 1, 2022 onwards shall be deducted from the compensation.

17. Based on the Monthly rent, the daily compensation is \$16.70. This amount is calculated as follows: \$508.00 x 12, divided by 365 days.

18. There is no last month's rent deposit.

*Relief from eviction*

19. 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. I am giving the Tenant extra time to find another suitable accommodation.

**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.
4. The Tenant shall pay to the Landlord \$2,672.22, which represents compensation for the use of the unit from October 1, 2022 to March 9, 2023. The Landlord shall deduct any rent payments received from the Tenant after October 1, 2022 from this amount
5. The Tenant shall also pay the Landlord compensation of \$16.70 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 Tenant does not pay the Landlord the full amount owing on or before April 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 12, 2023 at 5.00% annually on the balance outstanding.

**March 31, 2023**

**Date Issued**

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Sheena Brar

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.