



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

**Citation:** Zhao v Chen, 2023 ONLTB 26431

**Date:** 2023-03-31

**File Number:** LTB-L-039849-22

**In the matter of:** BASEMENT, 167 ALDERGROVE DR MARKHAM  
ON L3R6Z4

**Between:** Murong Zhao Landlords  
Xiaowei Zhang

**And**

Richard Chen Tenant

Murong Zhao and Xiaowei Zhang (the 'Landlords') applied for an order to terminate the tenancy and evict Richard Chen (the 'Tenant') because:

- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

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.

The Landlords' Agent Susan Lee, Landlords' witness Huang Zhang and the Landlords' Legal Representative R.W. Yu attended the hearing.

As of 11:00 a.m., 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 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 April 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 8, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served on July 13, 2022 with a termination date of September 30, 2022. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by her son.

#### *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 their son's residential occupation for a period of at least one year.
5. The Landlords live on the upper floors of the dwelling. Their son Huang Zhang testified that he, his wife and their young son intend to move into the basement rental unit. He needs his mother's help with childcare as he and his spouse have started their own business and need to go to work. His mother does not drive and his wife has to drive twenty minutes everyday in the morning and evening to drop the child to his mother's house. The basement unit is self-contained with its own kitchen and separate entrance and is big enough for his family's needs. He also added that he plans to stay there for much longer than a year.
6. Susan Lee, who is Huang Zhang's wife, testified that it is becoming increasingly difficult to drop off their son everyday at the mother-in-law's house. The basement unit is big enough for them and will be very convenient for the mother-in-law to take care of the baby.
7. Huang Zhang and his family currently live in their own house which is 20 minutes away. He plans to rent his own residence once he moves into the rental unit.

#### *Analysis*

8. In the leading case law involving a Landlords'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...”

9. 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”.

10. Based on the uncontested evidence, I find that the Landlords proved that it is more likely than not that their son in good faith requires the rental unit for the purposes of residential occupation. Specifically, I accept that Huang Zhang genuinely intends to occupy the rental unit for a period in excess of one year. I found Huang Zhang's testimony to be credible and reliable

*Compensation*

11. The Landlords has compensated the Tenant an amount equal to one month's rent on September 13, 2022 via e-transfer.
12. The Tenant was required to pay the Landlords \$3,945.21 in daily compensation for use and occupation of the rental unit for the period from October 1, 2022 to March 9, 2023.
13. Based on the Monthly rent, the daily compensation is \$24.66. This amount is calculated as follows: \$750.00 x 12, divided by 365 days.
14. The Landlords incurred costs of \$186.00 for filing the application and is not entitled to reimbursement of those costs.
15. There is no last month's rent deposit.

*Relief from eviction*

16. 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.
17. The Tenant has lived in the unit since 2018 but does not occupy the unit for significant periods of time. The Landlord believes he has another place to live.
18. I am giving the Tenant extra time since this is a long-standing tenancy, and the delay will give the Tenant adequate time to move his belongings out of the unit or find another suitable accommodation (if required).

**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 April 30, 2023.
2. If the unit is not vacated on or before April 30, 2023, then starting May 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 May 1, 2023.

4. The Tenant shall pay to the Landlords \$3,945.21, which represents compensation for the use of the unit from October 1, 2022 to March 9, 2023, less any rent already paid by the Tenant during that period.
5. The Tenant shall also pay the Landlords compensation of \$24.66 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 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2023 at 5.00% annually on the balance outstanding.

**March 31, 2023**

**Date Issued**

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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.