



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

Citation: DAVID v AZAR, 2023 ONLTB 26290

Date: 2023-03-31

File Number: LTB-L-015650-22

In the matter of: 2515 SKINNER STREET
LASALLE ONTARIO N9H2R5

Between: ANTONIO DAVID Landlord

And

WARDON AZAR Tenant

ANTONIO DAVID (the 'Landlord') applied for an order to terminate the tenancy and evict WARDON AZAR (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 (N12 Notice).

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 January 5, 2023.

The Landlord, the Landlord's representative A Andary, the Tenant, the Tenant's son K Azar and the Tenant's representative TL Jenkins attended the hearing.

Determinations:

1. For the reasons that follow, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by his daughter. The tenancy between the Landlord and the Tenant will be terminated.
2. On September 21, 2021 the Landlord served an N12 Notice of Termination ('N12 notice') on the Tenant. The N12 notice states that the Landlord's child intends to move into the rental

unit and occupy it for at least one year. The N12 notice seeks possession of the rental unit for November 30, 2021.

Was the application filed in time?:

3. The Tenant's representative TL Jenkins submits that the application was filed in the Board's portal on March 3, 2022, while the termination date on the N12 served on the Tenants was November 30, 2021. The Tenant submits the application should be dismissed because it was filed more than 30 days after the termination date in contravention of section 69(2) of the *Residential Tenancies Act, 2006* (the "Act").
4. The Landlord's representative A Andary submitted that the application was in fact filed with the Board on December 2, 2021 and that the discrepancy in the date on the application was not the fault of the Landlord. The Landlord submitted emails sent to the Board on December 2, 2021, including proof of payment for the application.
5. I find the Landlord's evidence establishes that the application was filed less than 30 days after November 30, 2021. The Landlord submitted proof that the application fee was paid on November 30, 2021 and an email dated December 2, 2021 to the Board that included the L2 application.
6. Therefore, the Landlord's application is not dismissed on this ground.

Good Faith:

7. The N12 notice was served under subsection 48(1) of the *Residential Tenancies Act, 2006* (the "Act"). The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement set out in that section of the Act which provides: a landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by:
 - (c) a child of the landlord or the landlord's spouse
8. The Landlord testified that he requires the unit for his daughter and her family to reside in while the house his daughter and her family are building is completed. The Landlord's daughter and her family are currently residing in a smaller rental unit.
9. The Landlord testified his younger daughter would move into the rental unit after his older daughter and her family moved into their newly built home.
10. The Landlord's daughter provided a declaration stating that she intends to reside in the rental unit for residential occupation for a period of at least one year.
11. The Tenant testified that the Landlord owns other properties and that the Landlord's daughter and family could move into a different property. The Landlord acknowledged that he owns other rental properties but there are no vacancies currently.

12. The Tenant testified that he has not reason to not believe that the Landlord's daughter will reside in the unit for one year.
13. The Tenant testified that he texted the Landlord on September 22, 2021, offering an increase in rent if the Landlord allowed the tenancy to continue, and that the Landlord responded that he "needs the unit for his daughter and her family".

Analysis:

14. The onus is on the Landlord to establish that the Landlord in good faith requires the rental unit for the purpose of residential occupation by his daughter.
15. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [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...

16. Thus, the Landlord must establish that his daughter genuinely intends to move into the unit. The Court also found in *Salter* that the Landlord's motives are "largely irrelevant".
17. The Landlord provided clear, consistent evidence that his daughter intends to move into the rental unit for at least one year.
18. The reasonableness of the Landlord's intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A landlord need not establish that his requirement is reasonable, only that he *bona fide* wanted and genuinely had the immediate intention to occupy.

19. I find therefore, that the reasonableness of the Landlord's intention to allow his daughter to move into this rental unit, versus any other that he owns, is not relevant to the issues of intention or good faith. Although alternatives may be available to the Landlord, it is not for the Board to determine what unit would be "most reasonable" for the Landlord's daughter to reside in; the Board must determine whether there is good faith and genuine intention to reside in the unit.
20. I found the evidence and testimony of the Landlord to be sufficient to establish that the Landlord in good faith requires the rental unit for residential occupation for at least one year. The Tenant's suggestion that there are alternative units available to the Landlord's daughter has no bearing on this determination.

Compensation and rent deposit:

21. Section 48.1 of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act'), requires the Landlord to provide compensation to the Tenant in amount equal to one month's rent where an N12 notice is served.
22. The Landlord testified that he provided compensation to the Tenant in the form of a cheque for an amount equal to one month's rent on November 30, 2021.
23. The Tenant did not dispute receiving and depositing this cheque.
24. I find that the Landlord did pay compensation to the Tenant as required by the *Act*.
25. The Tenant was required to pay the Landlord \$15,554.79 in daily compensation for use and occupation of the rental unit for the period from December 1, 2021 to January 5, 2023.
26. Based on the Monthly rent, the daily compensation is \$38.79. This amount is calculated as follows: \$1,180.00 x 12, divided by 365 days.
27. Since the termination date in the notice of termination, the Tenant paid the Landlord \$14,160.00 in rent.
28. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
29. There is no last month's rent deposit.

Section 83 Considerations

30. 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 be not unfair to delay the eviction pursuant to April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
31. The Landlord requested that the tenancy between the Landlord and the Tenant be terminated in accordance with the N12 notice on November 30, 2021.
32. The Tenant testified that he resides in the rental unit with his three adult sons. The Tenant testified that his source of income is long term disability, and that his sons are employed full time. The Tenant testified that other rental units in the area are very expensive.
33. I have turned my mind to the circumstances of both parties. There has been a delay between the N12 notice of termination and the date of the hearing, of more than 12 months, during which the Tenant and his sons could have been seeking alternative accommodation. The situation of the Landlord has not changed in that time, his daughter continues to require the rental unit.
34. However, I find that it would not be unfair to delay the eviction to April 30, 2023 to allow the Tenant and his sons additional time to obtain alternative housing.

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 \$1,394.79, which represents compensation for the use of the unit from December 1, 2021 to January 5, 2023, less the rental payments that the Tenant has made in that period.
5. The Tenant shall also pay to the Landlord \$38.79 per day for compensation for the use of the unit from January 5, 2023 to the date the Tenant moves out of the unit
6. The Tenant shall also pay to the Landlord \$201.00 for the cost of filing the application.
7. 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

Heather Kenny

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 November 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.