



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

Citation: Brazao v Mcnamee, 2023 ONLTB 25820

Date: 2023-03-30

File Number: LTB-L-037068-22

In the matter of: Room At The End, Basement, 571 CRAWFORD ST
TORONTO ON M6G3K1

Between: Fatima Brazao Landlord

And

Kevin Mcnamee Tenant

Fatima Brazao (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Mcnamee (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 7, 2023.

The Landlord and Landlord's witness Michael Brazao (MB) attended the hearing. The Landlord's Legal Representative C. Oliveira was also present.

As of 10:19 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 Landlord's evidence.

Determinations:

1. 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.

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On June 22, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on the same day with a termination date of August 31, 2022. The Landlord 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 Landlord 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. Michael Brazao (MB) testified that he will be moving into the unit himself. He is currently living with his parents. Even though he would like to stay close to them due to their advanced age, he would still like a place of his own. He testified he is single but would eventually want to have space for a relationship.
6. MB testified that he chose this unit as this one was the one with the lowest rent and even though he may pay rent to his parents, it may be less than the Tenant's current rent. The rental unit is also two houses away from his parents' house so he is able to assist his parents when they require him yet have privacy.
7. He further added that he is also the property manager of the properties his parents own. He can maintain and care for the property while living there since his father has health issues and is not able to do maintenance.

Analysis

8. 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...”

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. I found MB's testimony to be credible and reliable and I accept his testimony that he genuinely intends to occupy the rental unit for a period in excess of one year..
11. Based on all of the uncontested evidence submitted by the Landlord's side, I find that the Landlord proved that it is more likely than not that he in good faith requires the rental unit for the purposes of residential occupation. Specifically, I accept that MB in good faith

wishes to move into the rental unit. As explained above, the Board's role is not to assess the reasonableness of this intention.

Compensation

12. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022 by waiving off August 2022 rent.
13. The Tenant was required to pay the Landlord \$3,239.70 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to March 7, 2023. The Landlord's Legal Representative stated that the Tenant has not paid rent since October 1, 2022. Therefore, the Tenant shall pay the Landlord \$2,719.70 in daily compensation from October 1, 2022 to March 7, 2023.
14. Based on the Monthly rent, the daily compensation is \$17.10. This amount is calculated as follows: \$520.00 x 12, divided by 365 days.
15. The Landlord collected a rent deposit of \$475.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$106.64 is owing to the Tenant for the period from April 1, 2009.
16. 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 which is April 2023.

Relief from eviction

17. 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 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 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 \$2,658.06, which represents compensation for the use of the unit from October 1, 2022 to March 7, 2023, less the excess of rent deposit and interest the Landlord owes on the rent deposit after applying it to last month's rent.
5. The Tenant shall also pay the Landlord compensation of \$17.10 per day for the use of the unit starting March 8, 2023 until the date the Tenant moves out of the unit.

March 30, 2023

Date Issued

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 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.