



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

Citation: Thomas v Wanamaker, 2023 ONLTB 25822

Date: 2023-03-27

File Number: LTB-L-037262-22

In the matter of: 136 ST LAWRENCE BLVD
LONDON ON N6J2X1

Between: Juma Thomas Landlords
Suresh Thomas

And

Samantha Wanamaker Tenant

Juma Thomas and Suresh Thomas (the 'Landlords') applied for an order to terminate the tenancy and evict Samantha Wanamaker (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.

This application was heard by videoconference on March 7, 2023.

Only the Landlords and Landlords' witness Andrew Thomas (AT) attended the hearing. The Landlords' Legal Representative G. Hodgins was also present.

As of 10:14 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 have proven on a balance of probabilities the grounds for termination of the tenancy. 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 April 5, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served on the same day with a termination date of June 30, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their child.

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Good Faith

4. I find that the Landlords in good faith requires possession of the rental unit for the purpose of their son's (AT) residential occupation for a period of at least one year.
5. AT testified that he is a fourth-year student at McMaster University. He wants to move to the rental unit to save money on rent which is currently paying at Hamilton. He testified that when he filed the Affidavit, he was still staying with his parents but this semester he moved to Hamilton and is renting for \$550.00 per month.
6. AT further testified that he does not have classes everyday and his commute from London to Hamilton is around one-hour. The other reason for him to move to London is that his best friend attends university in London and he would like to be closer to them as he is already spending time with them every week.
7. The rental unit is a 3-bedroom unit, and he plans to stay occupy by himself for at least a year since he will be doing an extra semester.
8. The Landlord Juma Thomas further testified that the Tenant has lived at the rental unit since 2018 and the rent has never been increased and they have no problems with the tenant.

Analysis

9. 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...”

10. Thus, the Landlords 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”.

11. I found AT's testimony to be credible and reliable and I accept his testimony that he genuinely intends to occupy the rental unit for a period of at least one year. He was forthcoming and consistent in his testimony.
12. Based on all of the uncontested evidence submitted by the Landlords' side, I find that the Landlords 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 AT 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

13. The Landlords have compensated the Tenant an amount equal to one month's rent by June 30, 2022. The Landlord Juma Thomas testified they sent the Tenant an e-transfer on June 28, 2022, that the Tenant accepted.

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14. The Landlords collected a rent deposit of \$1,695.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$101.01 is owing to the Tenant for the period from November 1, 2018, till March 7, 2023.
15. 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

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. This is a long-standing tenancy, and the Tenant should be given a reasonable opportunity to find another suitable accommodation. I will grant them time until April 30, 2023 for the same.

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. As of the date of the hearing, the amount of the rent deposit and interest the Landlords owe on the rent deposit exceeds the amount the Landlords are entitled to by \$(1,796.01).
5. However, the Landlords are authorized to deduct from amount owing to the Tenant \$55.73 per day for compensation for the use of the unit starting March 8, 2023 to the date the Tenant moves out of the unit.

March 27, 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 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.