



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

Citation: Wong v Xie, 2023 ONLTB 26260

Date: 2023-03-21

File Number: LTB-L-049224-22

In the matter of: 207 HAZELTON AVE
MARKHAM ON L6C0L8

Between: Kit Ping Wong Landlord

And

Tao Xie Tenants Zeliang (Wayne) Du

Kit Ping Wong (the 'Landlord') applied for an order to terminate the tenancy and evict Tao Xie and Zeliang (Wayne) Du (the 'Tenants') because:

- the Landlord 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 9, 2023.

The Landlord's Spouse Qiong Li and the Landlord's Legal Representative Pui Sze Cheung and the Tenant Tao Xie and the Tenant's Daughter Wendy Zheng attended the hearing. The Landlord's Spouse was assisted by an Interpreter Emily Wang.

Determinations:

1. This L2 application seeks the eviction of the Tenant because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by his wife and children for a period of at least one year.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 13, 2022, the Landlord mailed the Tenant an N12 notice of termination, deemed served on August 18, 2022. The termination date on the notice of termination is October 19, 2022. The monthly rent is \$2,660.00 and is due on the 20th day of every month.

4. The Landlord paid the Tenant compensation equal to one month's rent before the termination date in accordance with section 48.1 of the Residential Tenancies Act, 2006 (the Act).

Good Faith

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5. Section 48 of the *Residential Tenancies Act, 2006* (the "Act") has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the landlord's intention, nor the fact that the landlord may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.)).
6. The Landlord filed an affidavit signed by his spouse Qiong Li, stating that she intends to live in the rental unit with their two children for a period of least one year.
7. The Landlord also filed a declaration stating he required the rental unit for his wife and children.
8. The Landlord's wife, Ms. Li testified that she has recently come to Canada with her two children. She currently lives in a one bedroom condo and has had two previous rental addresses that did not suit the needs of herself and the children. Her evidence was the family was tired of living in cramped spaces and also tired of moving elsewhere in the hopes of finding a different rental unit that would be a better fit for the family.
9. Ms. Li testified the rental unit is a house and provides the extra space her family needs. It is also close to the schools the Landlord and Ms. Li want their children to attend. It is the only property they own. The Landlord submitted evidence they had registered their children for school close to the rental unit, but they could not attend as the Tenant had not vacated the rental unit by the termination date.
10. The Tenant did not challenge the good faith intentions of the Landlord. During cross examination the Tenant asked Ms. Li if she could not move elsewhere. Ms. Li responded that she wanted her own place to live with her children.
11. Based on all of the evidence, I am satisfied on a balance of probabilities the Landlord's spouse and children genuinely intend to move into the rental unit and reside there for at least one year. As a result, I am satisfied the N12 Notice was served in good faith.

Section 83 Considerations

12. The Landlord sought eviction by the end of March 2023. In support of this they cited the cramped living conditions Ms. Li and the children are currently living in.
13. The Tenant's evidence was she is a full time student. She has no active employment and is being assisted financially by her daughter. She has undergone some significant surgeries which have had some lasting effects. She is also diabetic. The Tenant's evidence was that without employment it has proven difficult to secure alternative living arrangements. The Tenant acknowledged relying on her daughter for financial assistance is not feasible long term.
14. 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

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postpone the eviction until April 9, 2023 pursuant to subsection 83(1)(b) of the Act. This extra time is meant to balance the interests of the Landlord while providing the Tenant one month from the hearing date to find new living accommodations. I note the Tenant has had notice this could be a possibility since August 18, 2022, when the N12 Notice was served.

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 9, 2023.
2. If the unit is not vacated on or before April 9, 2023, then starting April 10, 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 April 10, 2023.

March 21, 2023

John Cashmore

Date Issued

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 10, 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.