



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

Citation: Wang v Kiani, 2023 ONLTB 26272

Date: 2023-03-20

File Number: LTB-L-082001-22

In the matter of: BASEMENT SUITE, 95 RIVERMILL CRES MAPLE
ON L6A0H4

Between: Yonghong Wang Landlord

And

Mahrokh Kiani Tenants
Mohsen Shirani Takabi
Roxana Kiani

Yonghong Wang (the 'Landlord') applied for an order to terminate the tenancy and evict Mahrokh Kiani, Mohsen Shirani Takabi and Roxana Kiani (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.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 9, 2023. The Landlord, the Landlord's daughter, J. Bai, and the Tenant, M. Shirani Takabi (MT), attended the hearing. MT stated he was appearing on behalf of the other named Tenants.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find that it would not be unfair to postpone the eviction until April 30, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. The Tenants reside in the basement unit of the residential complex. The Landlord and JB reside on the main and upper floor of the residential complex.

N12 Notice of Termination

4. On December 15, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of February 28, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their spouse, Y. Bai (YB).

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5. The Landlord has compensated the Tenants an amount equal to one month's rent by February 28, 2023. Submitted into evidence was a letter dated December 12, 2022, advising the Tenant that January 2023 rent would be waived in consideration of this L2 application.
6. The Landlord filed a declaration from YB with the application, which states that he requires the unit for residential occupation for a period of not less than one year.
7. JB testified that the reason her father wants to occupy the unit is because of his deteriorated health. He has life threatening health problems related to his heart. They intend to make changes to the rental unit to accommodate his health needs such as a walk-in shower, handrails throughout the unit and new back doors. While residing upstairs at the residential complex, her and her mom will be able to provide YB with regular care. The reason YB cannot reside upstairs is because JB's daughter is quite young, runs around, makes noise and leaves toys around. They are concerned that if YB resides on the main and upper floor, he may trip and would not have a restful environment to improve his health. YB is currently residing at another rental unit since his discharge from the hospital on February 18, 2023.
8. Submitted into evidence were photographs of YB at the hospital and a doctor's note which states that YB needs to reside with his family and the doctor supports the decision for the basement unit to be renovated to suit his health needs.
9. MT disputed that YB is going to reside in the unit. Rather, he believes that the Landlord is terminating the tenancy due to a dispute between the Tenants and JB. Specifically, he stated that in January 2023, JB had called his work to speak to his manager and complained about his alleged outstanding rent arrears and utilities. In addition, JB served an N4 Notice on him. Submitted into evidence were screenshots of text messages from the Landlord discussing a move out date and that the JB would be serving an N4 Notice.
10. JB did not dispute that she called the Tenant's employer, but only did so because she could not get in contact with the Tenant. She left a voicemail.
11. Regarding the Tenant's allegation that the Landlord was seeking to terminate the tenancy because JB and him had issues, the existence of difficulties between parties or their agents

does not place a reverse onus on a landlord to show that she has not acted in bad faith. The test is whether, "in good faith", the landlord's spouse intends to occupy the unit for residential purposes, not good faith untainted by any hint of difficulties between them. If that were the legal test, then an N12 could only be served in circumstances where the landlord and tenant relationship was completely unblemished by any problems. That is not the law. Furthermore, the evidence before me is that the N12 was served on the Tenants before the telephone call. If the reason for termination was the arrears and utilities, you would think that the service of the N12 would be contemporaneous with the telephone call. That is not the case here.

12. Furthermore, regarding the dispute about the arrears, the evidence before me is that the Landlord exercised the proper forum and served an N4 Notice. As such, I do not find that this is the real reason for service of the N12 Notice.
13. I am therefore satisfied on the balance of probabilities, that the Landlord's spouse in good faith requires possession of the rental unit for the purpose of residential occupation and she genuinely intends to reside in the rental unit and for a period of one year.

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Relief from eviction

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 postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
15. The Landlord submitted that the tenancy should be terminated no later than April 15, 2023 as the Landlord still needs time to renovate the unit so that YB can move in as soon as possible. Further, YB residing at another unit has been difficult as he has been unable to properly take a shower and the Landlord has had to attend the unit regularly to assist him.
16. The Tenant submitted that if required to vacate, they need at least four months to vacate as he works from home and he has a 1 ½ year-old daughter.
17. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy. While the Tenants prefer four months, there appears to be sufficient prejudice to YB and the Landlord based on his current living situation. As such, I find that one month provides the Tenants some time to organize their move.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants 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.

March 20, 2023 _____ **Date Issued**
Camille Tancioco

Member, Landlord and Tenants 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 Tenants 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.