



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

Citation: Kibria v Williams, 2023 ONLTB 25857

Date: 2023-03-14

File Number: LTB-L-046814-22

In the matter of: MAIN FLOOR
175 CIVIC CENTRE DR.
WHITBY ON L1R2V3

Between: Golam Kibria Landlords
Ishrat Jahan

And

Keiko Allyson Hosaki (aka Keiko Allyson Williams) Tenants
Nasya Williams

Golam Kibria and Ishrat Jahan (the 'Landlords') applied for an order to terminate the tenancy and evict Keiko Allyson Hosaki (aka Keiko Allyson Williams) and Nasya Williams (the 'Tenants') because:

- the Landlords in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords 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 Landlords, and the Landlord's Legal Representative, Yasmine van Maurik, attended the hearing.

As of 9:45 a.m., the Tenants were 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 and the claim for compensation in the application. Therefore, the tenancy is terminated effective March 25, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.

N12 Notice

3. On June 28, 2022, the Landlord gave the Tenants a valid N12 notice of termination ('N12 Notice') with the termination date of August 31, 2022. The Landlord testified the N12 Notice was attached to the front door of the rental unit in a sealed envelope. He stated a letter from his Legal Representative accompanied the N12 Notice. Although the N12 Notice was not served in accordance with Rule 3.1 of the Rules of Procedure, the Landlord testified he had a text message conversation with the Tenant and by that conversation it was clear the Tenant received the letter thus was also in receipt of the N12 Notice. He added the envelope was not visible on the front door on June 29, 2022.
4. The Landlord's Legal Representative submitted that on March 4, 2023, she provided the Tenants with a copy of the notice of hearing and the Landlords' required declarations by email in which she confirmed the hearing date of March 7, 2023.
5. Section 191(2) of the *Residential Tenancies Act, 2006* (the 'Act') states "a notice or document that is not given in accordance with this section shall be deemed to have been validly given if it is proven that its contents actually came to the attention of the person for whom it was intended within the required time period."
6. Based on the uncontested evidence before me, I am satisfied that the contents of the N12 Notice came to the attention of the Tenants therefore the N12 Notice is valid.

Compensation

7. The Landlord testified the required compensation under s.48.1 of the Act was provided to the Tenants by way of waiving the monthly rent for July 2022. He stated the Tenants accepted this compensation as no rent payment for July 2022 was received by the Landlord.
8. Based on the uncontested evidence before me, I am satisfied the requirements under s.48.1 and s.55.1 of the Act have been met.

Good faith

9. In order to be successful in this application, the Landlords must satisfy the Board that the Landlords require, in good faith, the rental unit for the purpose of residential occupation by the Landlords. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), the court clarified the Landlord's good faith requirement as follows:

In my view, s.51(1) charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

10. The Landlords testified the residential complex is a three bedroom single family home with a non-conforming one bedroom basement apartment. They testified they currently reside in the basement unit with their two adult children and have done so since August 2022. The stated the current living situation is challenging as their children attend university and secondary school operating with a hybrid model of learning. There is no private space for their children to study as they share the one bedroom in the unit. They added they sleep in the living room area which is quite small. The Landlords testified the home is there only rental property and it is their intention to live in the house for the foreseeable future.
11. Overall, I found the Landlords to be credible witnesses. In light of their expressed need to have a larger living space, I find it believable the Landlords will be moving into the rental unit for the purpose of residential occupation for a period extending longer than one year.
12. Based on the uncontested evidence before me, I am satisfied the Landlords have a genuine intent to move into the rental unit for a period of at least one year and as a result, the application is granted.

Daily compensation

13. The Tenants were required to pay the Landlord \$16,379.18 in daily compensation for use and occupation of the rental unit for the period from September 1, 2022 to March 7, 2023.
14. Based on the Monthly rent, the daily compensation is \$87.12. This amount is calculated as follows: \$2,650.00 x 12, divided by 365 days.
15. Since the termination date in the notice of termination, the Tenants have paid the Landlord \$12,900.00 in rent.
16. The Landlords incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
17. The Landlords collected a rent deposit of \$2,650.00 from the Tenants and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$71.55 is owing to the Tenants for the period from August 1, 2021 to March 7, 2023 .
18. In accordance with subsection 106(10) of the Act the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Section 83 considerations

19. Section 83 of the Act requires that the Board consider all the circumstances in the case, including the Tenants' and the Landlords' situations, to determine if it would be appropriate to delay or deny eviction in the form of section 83 relief.
20. The Landlords testified they are unaware of any circumstances of the Tenants that would cause the termination of the tenancy to be delayed or denied. As the Tenants did not attend the hearing to give evidence, I am unable to determine if there are any circumstances to delay or deny eviction under s.83 of the Act.
21. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
22. This order contains all the reasons for the decision. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before March 25, 2023.
2. If the unit is not vacated on or before March 25, 2023, then starting March 26, 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 March 26, 2023.
4. The Tenants shall pay to the Landlords \$742.06, which represents compensation for the use of the unit from September 1, 2022 to March 7, 2023, less the rent payments received, the rent deposit, and interest the Landlords owe on the rent deposit.
5. The Tenants shall also pay to the Landlords \$186.00 for the cost of filing the application.
6. The total amount the Tenants owe is \$928.06.
7. The Tenants shall also pay the Landlords compensation of \$87.12 per day for the use of the unit starting March 8, 2023 until the date the Tenants move out of the unit.
8. The Landlords or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

March 14, 2023

Date Issued

Susan Priest

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 September 26, 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.