



**Order under Section 69 / 88.1
Residential Tenancies Act, 2006**

Citation: De souza v Kelly, 2023 ONLTB 25675

File Number: LTB-L-050721-22

In the matter of: 1, 64 GOLDEN MEADOW RD
BARRIE ON L4N7G5

Between: Flavio De Almeida, Jennifer De souza Landlord

And

Deborah Kelly, Jennifer Brisebois Tenant

Flavio De almeida and Jennifer De souza (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Kelly and Jennifer Brisebois (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.

Flavio De almeida and Jennifer De souza (the 'Landlord') also applied for an order requiring Deborah Kelly and Jennifer Brisebois (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's conduct or that of another occupant of the rental unit or someone the Tenant permitted in the residential complex. This conduct substantially interfered with the Landlord's reasonable enjoyment of the residential complex or another lawful right, privilege or interest.

This application was heard by videoconference on March 2, 2023.

Only the Landlord attended the hearing.

As of 1:18PM, 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. Therefore, an order shall issue granting the Landlord's request for eviction and terminating the tenancy March 24, 2023.
2. By way of background, this is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$2,100.00. The residential complex is a house which two rental units; the Tenant resides in the 2-bedroom basement unit. This tenancy began in December 2021.
3. The Tenant was in possession of the rental unit on the date the application was filed and continues to be in possession of the rental unit as of the hearing date.

N12 Notice of Termination

4. On September 2, 2022, the Landlord gave the Tenant a N12 notice of termination with a termination date of November 30, 2022 pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006* alleging that they require vacant possession of the rental unit for the purpose of residential occupation by their parent.
5. A copy of their father's declaration was submitted to the Board in support of their application which confirms he requires the basement unit to move into as he has provided notice to his landlord and needs to be with family for medical reasons.
6. The Landlord testified that she has compensated the Tenant an amount equal to one month's rent by waiving the rent for October 2022 based on an agreement between the parties.

7. The Landlord's uncontested evidence was that her father is presently between Airbnb rentals and couch-surfing at his friends' homes while they wait for the eviction. This has resulted in substantial time and financial cost for the Landlord to search and book places when family friends are unable to accommodate the Landlord's father. The Landlord explains that her father was renting a unit and provided notice to his landlord when the N12 notice of termination was served. His landlord was able to find a new tenant for the month after and so her father could not extend his stay there.
8. The Landlord seeks a termination of the tenancy so that her father can move into his permanent home. She testified that she has been in contact with the Tenant's caseworker who has advised the Tenants have secured another home but as of the hearing date, the Tenants have not vacated the rental unit.
9. Subsection 48(1) of the Act states:
 - 48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,
 - (a) the landlord;
 - (b) the landlord's spouse;
 - (c) **a child or parent of the landlord or the landlord's spouse;**
10. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"), this legal test remains unchanged under the successor legislation (see Salter, para. 25 and 26).
11. Based on the Landlord's uncontested evidence, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for her father and has met the requirements of the Act with respect to the compensation pursuant to section 48.1 of the Act. As such, the Landlord's request for eviction is granted.

Compensation for substantial interference

12. As part of the Landlord's L2 application is a claim for out-of-pocket expenses incurred by the Landlord in the amount of \$1,356.00.
13. At the hearing, the Landlord testified that the claim represents the cost of the exterminator to address the Tenant's bedbug infestation; the Landlord explains that in July 2022, the Tenant texted her to advice of a bedbug infestation in her unit.
14. The Landlord responded by indicating that this was not wear-and-tear and therefore not the responsibility of the Landlord; she informed the Tenant that the Tenant would have to

resolve this infestation issue. After a month, the Tenant had still not addressed the infestation which caused them to spread to the Landlord's unit and the Landlord hired a technician to perform the treatment.

15. Section 88.1 of the Act states:

88.1 (1) A landlord may apply to the Board for an order requiring a tenant or former tenant to pay costs described in subsection (4) if,

(a) while the tenant or former tenant is or was in possession of the rental unit, the conduct of the tenant or former tenant, another occupant of the rental unit or a person permitted in the residential complex by the tenant or former tenant is or was such that it substantially interferes or interfered with,

(i) the reasonable enjoyment of the residential complex for all usual purposes by the landlord, or

(ii) another lawful right, privilege or interest of the landlord; and

(b) in the case of a tenant or former tenant no longer in possession of the rental unit, the tenant or former tenant ceased to be in possession on or after the day section 19 of Schedule 4 to the Protecting Tenants and Strengthening Community Housing Act, 2020 comes into force

16. Based on the evidence before the Board, I am not satisfied that the claim for costs falls within the scope of this section. I do not find that the Landlord has proven that these expenses were incurred as a result of the Tenant's conduct, namely substantial interference.

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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

18. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 March 24, 2023.
2. If the unit is not vacated on or before March 24, 2023, then starting March 25, 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 25, 2023.

March 13, 2023

Date Issued

Anwar-Ali

Sonia

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 25, 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.