



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

Citation: Litvinov v Tabel, 2023 ONLTB 23977

Date: 2023-03-08

File Number: LTB-L-050046-22

In the matter of: 301-30 North Park Road Thornhill,
ON L4J 0G7

Between: Dimitri Litvinov Landlords
Marina Litvinov

And

Ruslan Tabel Tenant

Dimitri Litvinov and Marina Litvinov (the 'Landlords') applied for an order to terminate the tenancy and evict Ruslan Tabel (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.

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

This application was heard by videoconference on February 9, 2023.

The Landlord Dimitri Litvinov (DL) and the Landlord's Legal Representative Christina Nastas appeared on behalf of the Landlords. The Tenant attended on his own behalf and met with Tenant Duty Counsel prior to the hearing.

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 as of April 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On August 25, 2022, the Landlords gave the Tenant an N12 notice of termination deemed served August 30, 2022, with the termination date of October 31, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation for themselves.
4. The Landlord testified that he intends on moving into the unit with his wife and daughter for a period of at least a year.
5. The Landlord testified that he is currently living with his mother and stepfather and is sleeping on the couch.
6. The Landlord had served an initial N12 notice of termination upon the Tenant on June 1, 2022. The Landlord never filed an application with respect to this notice.
7. The Tenant testified that the Landlord told him that he wanted him to vacate the unit so that the Landlord's son could move in however, he never received a notice for this.
8. The Tenant testified further that he had received a letter from the Landlord a week before the hearing suggesting that the Landlord's son is moving in for a job offer. This letter was not entered into evidence.

Compensation

9. Entered into evidence by the Landlord was a letter dated August 25, 2022 that was sent to the Tenant requesting that the Tenant disregard the previous N12 notice and confirming that the Tenant is not required to pay rent for the month of September 2022 for the purposes of compensation as required under s. 48.1 and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').
10. Despite this, the Tenant did attempt to pay rent for the month of September. Entered into evidence was an Interact e-Transfer dated November 1, 2022 with a note from the Tenant outlining that the payment was for September's rent. The Landlord's Legal Representative requested from the Tenant the same day by e-mail to amend his note to reflect October's rent and reminded the Tenant that rent was not required to be paid for September.
11. As such, I am satisfied on a balance of probabilities that the Landlord compensated the Tenant one month's rent prior to the termination date of October 31, 2022 as required under the Act.

Analysis

12. Interpretation Guideline 12 of the Board's *Interpretation Guideline* outlines that at the hearing, a landlord must prove, on a balance of probabilities, that he or she in good faith requires the rental unit for the purpose of residential occupation by the person specified in the notice of termination.
13. The case of *Feeny v. Noble*, 1994 CanLII 10538 (ON SC) outlines that whether the landlord's plan is reasonable is not the test.

14. The case of *Fava v. Harrison*, 2014 ONSC 3352 outlines that while the motives of the landlord in seeking possession of the property are largely irrelevant, this does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences to whether the landlord desires, in good faith, to occupy the property.
15. Based on the evidence of both parties, I am satisfied on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

Daily Compensation

16. The Tenant was required to pay the Landlord \$5,893.97 in daily compensation for use and occupation of the rental unit for the period from November 1, 2022 to February 9, 2023.
17. Based on the Monthly rent, the daily compensation is \$58.36. This amount is calculated as follows: \$1,775.00 x 12, divided by 365 days.
18. Since the termination date in the notice of termination, the Tenant paid the Landlord \$7,100.00 in rent which represents rent paid for the months of November, December, January and February. The parties agreed that the Tenant was up to date with his rent.
19. There is no last month's rent deposit.

Section 83 Considerations

20. The Tenant testified that he has been looking for a new unit since June of 2022 but has had little success due to the low number of vacancies and high rent charges. The Tenant testified that he contacted a realtor and has been in touch with them as recently as two weeks prior to the hearing to assist in vacating the unit.
21. The Tenant requested 60 to 90 days in order to vacate the unit. Having considered the evidence of both parties, I will delay eviction until April 30, 2023.
22. 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.

It is ordered that:

23. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2023.
24. 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.
25. 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 8, 2023

Date Issued

Jagger Benham

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 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.