



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

Citation: Blakely v Dupie, 2023 ONLTB 23359

Date: 2023-03-07

File Number: LTB-L-019714-22

In the matter of: Basement, 182 RANKIN CRES
TORONTO ON M6P4H9

Between: Michael Blakely Landlord

And

Chirysh Dupie Tenant

Michael Blakely (the 'Landlord') applied for an order to terminate the tenancy and evict Chirysh Dupie (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 January 9, 2023.

The Landlord attended the hearing and was represented by Carrie Aylwin. The Tenant attended the hearing, was self-represented, and was assisted by Ademofe Oye-Adeniran with an adjournment request.

Determinations:

1. This application is about a detached house which consists of three rental units. The Tenant occupies the basement unit.
2. The Landlord requests an order terminating the tenancy so that the Landlord can occupy the unit for personal use.
3. For reasons that follow, the application is granted. The Tenant is to vacate the unit on or before May 31, 2023.

PRELIMINARY MATTERS

4. The Tenant raised two preliminary issues.
5. The Tenant made two requests to adjourn the hearing. The first adjournment request was made through the Tenant's legal representative who submitted that the Tenant requires time to retain a legal representative to assist with the collection of evidence and

representation at a hearing, without which the Tenant would be at a disadvantage during the hearing. The Landlord's legal representative objected to the adjournment requests submitting that the Tenant had been made aware of the issues in the application as far back as March 2022 when the N12 that is the subject of the hearing was given to the Tenant. As such, in the view of the Landlord's legal representative, adjourning the hearing would be prejudicial to the Landlord by imposing additional delay having the application heard.

6. Later in the hearing the Tenant made a second request for an adjournment as the hearing was, in her view, beginning late in the day at 5:12 p.m. when her daughter had returned home (where the Tenant was attending the hearing from), which would make it difficult for her to advocate for herself. The Landlord's legal representative objected to the second adjournment request citing prejudice to the Landlord from further delay hearing the application.
7. The Board's Interpretation Guideline 1 states the following regarding requests to adjourn for the purpose of obtaining legal representation:

Section 10 of the *Statutory Powers Procedure Act* states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

A short adjournment may be allowed where a representative has been retained but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or paralegal before the hearing but have not yet been able to do so.

8. Section 183 of the *Residential Tenancies Act, 2006*, (the 'Act') requires the Board to adopt the most expeditious methods of determining the questions arising in a proceeding. I am not satisfied that the Tenant made reasonable efforts to secure representation for the hearing. Moreover, given that the Landlord filed their application over 10 months ago, in my view, delaying the hearing any further would be unduly prejudicial to the Landlord. For these reasons the two adjournment requests were denied.
9. The second adjournment request was denied, as this too would be unduly prejudicial to the Landlord by creating further delay.

THE L2 APPLICATION

10. The following facts are not in dispute:
 - a. The residential complex is a detached house which consists of three rental units. The Tenant resides in the basement unit.

- b. An N12 notice of termination (the 'N12 Notice') was delivered to the Tenant by the Landlord on March 31, 2022 informing the Tenant that the Landlord intends to move into the rental unit and occupy it for at least one year.
- c. The date of termination identified on the N12 Notice was May 31, 2022.
- d. The monthly rent is \$750.00.
- e. The Landlord paid the Tenant one-month compensation of \$750.00 by e-transfer on May 13, 2022.
- f. The Tenant has yet to vacate the rental unit.

Good faith

11. Subsection 48(1)(a) of the Act provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord in good faith requires possession of the unit for residential occupation for a period of at least one year. The evidence supports a finding that the Landlord intends, in good faith, to occupy the unit for residential purposes for at least one year.
12. The test of good faith is outlined in a series of judicial decisions. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement means that the Landlord sincerely intends to occupy the rental unit. Although the Landlord may have other motives for selecting a particular rental unit, these would not affect the good faith of the Landlord's notice.
13. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court added that while the motives of the Landlord are "largely irrelevant", as determined in *Salter*, the Board may consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the residential unit.

Landlord's evidence

14. The Landlord testified that he intends to move into the rental unit for a period of at least one year as he and his wife are separating and, as a result, he is in need of a place to live.
15. Elaborating further, he explained that he and his wife have a family home in a different area of the city from which he would be moving. In response to questioning, the Landlord explained that he temporarily occupies the main floor unit, however, as this unit is a rental unit from which he needs to earn rental income in order to financially maintain the residential complex (which he estimates to be \$3,500.00 - \$4,000.00 per month), he is in need of the basement unit for his personal residential use.
16. Finally, the Landlord confirmed that he paid the Tenant compensation in accordance with the N12 Notice on May 13, 2023. The Landlord submitted into evidence a screenshot of an e-transfer payment made to the Tenant for \$750.00 (this was not dated), and a copy of an 'Affidavit' affirmed on April 5, 2022 wherein the Landlord affirms that he intends to move into the unit "for a period of one year or longer." The Tenant confirmed that she received the one-month compensation in relation to the N12 Notice prior to the date of termination identified on the N12 Notice.

Tenant's evidence

17. The Tenant testified that she has lived in the unit since 2011 and currently resides with her three-year old daughter. The Tenant contests that the Landlord issued the N12 Notice in good faith for the following reasons.
18. First, the Tenant testified that the Landlord issued three N12 Notices over the course of the tenancy to evict her of which two were not acted upon by the Landlord. In her view, this indicates that the Landlord does not intend to move into the unit because if he truly intended to occupy the unit, he would have filed applications with the Board to terminate the tenancy based on those notices, which he did not do.
19. Elaborating further, the Tenant testified that the Landlord issued an N12 Notice in 2015, a second notice in 2018-2019, and a third N12 Notice in March 2022, which is the subject of this hearing. The Landlord does not deny issuing N12 Notices in the past, explaining that as he did not have a legal representative to assist him he did not act on the previous notices as he was unfamiliar about the process. My review of the application indicates that the Landlord responded in the negative to the portion of the application which requires an applicant landlord to declare whether any 'Previous N12 Notices' were given in the past two years, which I find, based on the forgoing, was correct at the time the statement was made.
20. The second reason the Tenant is of the view the Landlord issued the subject N12 Notice in bad faith is because he allegedly has a history of giving notices of termination as a form of intimidation. As an example, and in addition to the Landlord's alleged history of giving N12 Notices, the Landlord gave the Tenant an N4 Notice earlier in the history of the tenancy when she was a student waiting for her Ontario Student Assistance Program ('OSAP') funds to be released. She explained that the Landlord was aware of this delay and, despite her overall good payment history, issued the N4 Notice to intimidate her in the same way as the N12 Notices were issued.
21. Thirdly, the Tenant testified that, in her view, the Landlord gave the N12 Notice in bad faith as she believes that he is not in financial distress, and has multiple housing options such that if he was moving because of a dissolution in his marriage, he would choose those more desirable options.

Analysis

22. I find that, based on the evidence presented, and in accordance with the courts' decisions in *Feeney* and in *Salter*, the Landlord, in good faith requires possession of the rental unit for his own use as indicated in the N12 notice. I am satisfied that the Landlord has a genuine intention to occupy the premises for at least one year and, as such, issued the N12 notice in good faith.
23. Although I acknowledge the Tenant's evidence of the Landlord's history of issuing notices of termination, and the Courts decision in *Fava* to consider the conduct and motives of the Landlord, I am satisfied that given the length of time the tenancy has been in place it is not unusual for disputes to arise such that giving notices of termination by either party may be necessary. As such, I do not draw a negative inference that the Landlord does not have a

genuine intention to move into the unit based on the past history of giving notices of termination. I am also satisfied that, pursuant to *Feeney* and *Salter*, despite the Tenant's concerns of the Landlord's choice to move into the rental unit, (i.e., the Landlord's marital separation and financial circumstances) that the Landlord has a genuine intention to occupy the unit.

Compensation

24. As outlined above the evidence supports a finding that the Landlord paid one-month compensation to the Tenant in compliance with section 48.1 of the Act.

Relief from Eviction

25. Subsection 83 (2) of the Act requires the Board to review all of the circumstances and consider whether or not it should exercise its powers under subsection 83(1). Having considered the circumstances, I find that it would not be unfair to postpone the eviction pursuant to subsection 83(1)(b) for 3 months until May 31, 2023.
26. The Tenant testified that she has lived in the unit for approximately 11 years, and is a single mother of a 3 year old daughter who attends school and recreational activities (i.e., dance classes) in the area. The Tenant has established a network of friendships and relationships (particularly with other mothers) who assist her as she raises her young daughter. Moving from the unit would, in the Tenant's view, be prejudicial to her and her daughter as the community connection would be lost. The Tenant also testified that her current rent is affordable and if she was forced to move she would be unable to afford to pay rent in the community and would need to move to a new area.
27. The Landlord testified that should the Board deny the application, he would have no place to live as he is unable to live in his current matrimonial home (due to his separation) and he is currently running out of personal financial resources to find accommodation elsewhere. He explained that should the Board terminate the tenancy, he could move into the unit within one week, however, is open to giving the Tenant "a few months" to move.
28. Considering all of the evidence and, notwithstanding the Landlord in good faith requires possession of the rental unit for his personal use, I find that, pursuant to subsection 83(1)(b), and noting that that it has been almost two months since the date of the hearing, that it would not be unfair to the Landlord to delay the eviction until May 31, 2023 due to the significant impact an early eviction would have on the Tenant and her daughter.
29. Given the Tenant's connection to the community and schooling needs of her daughter, I am satisfied that they may experience challenges securing housing that fits their needs such that more time is required. By contrast, the Landlord continues to have stable housing as the family residence is not being sold but will continue to be used by the Landlord's family once he moves into the rental unit and, the Landlord also has access to the main floor of the residential complex. While I acknowledge that the residential complex in which the Landlord lives no longer meets his needs, after considering the totality of the circumstances I conclude that delaying eviction for a further 3 months from the date of this order is fair and appropriate.

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 May 31, 2023.
2. If the unit is not vacated on or before May 31, 2023, then starting June 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 June 1, 2023.

March 7, 2023

Date Issued

Emile Ramlochan

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 January 1, 2024 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.