



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

Citation: Fernando v David, 2023 ONLTB 22571

Date: 2023-03-03

File Number: LTB-L-022939-22

In the matter of: 91 Antibes Dr
Brampton ON L6X0R8

Between: Shanika Fernando Landlord

And

Denise Angela David Tenant

Shanika Fernando (the 'Landlord') applied for an order to terminate the tenancy and evict Denise Angela David (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 12, 2023 at 9:00 a.m.

The Landlord, represented by Linda Floros, a licensed Paralegal, and the Tenant attended the hearing.

Preliminary Issue:

1. The Tenant requested an adjournment in order to obtain legal representation. As per own submission citing the Statutory Powers and Procedures Act Section 10 which she states as a party may be represented by a representative at a hearing. The Tenant goes on to state that the "burden is upon the party wishing to be represented to make all reasonable efforts by the Lawyer or Paralegal able to represent them once they become aware of the hearing date". The Tenant further elaborated that there is a Superior Court action in relation to the rental unit.
2. The Tenant did not bring any letters or documents to the hearing to support her submissions as noted in paragraph 1.
3. The Landlord's representative opposed the adjournment request submitting that the Tenant has had ample time to secure representation, that the Notice of hearing was sent out to the parties on December 2, 2022, and that the Tenant had ample time to decide on representation. The Landlord's representative further submitted that the Tenant has not

submitted any documents to support that she has engaged a Lawyer or Paralegal to represent her at the hearing and that any further delays would prejudice her client.

4. The Tenant has not submitted any documents or proof that she has initiated any further legal proceeding and or that she has engaged legal representation, she has also not obtained consent for an adjournment from the Landlord nor has she submitted the request to reschedule a hearing request at least 5 business days before the hearing as required.
5. I ruled that based on the submissions from the parties as noted in the paragraphs above that I would not grant an adjournment and that the hearing would proceed as scheduled.

6. Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Notice to Terminate Tenancy

3. On March 31, 2022, the Landlord gave the Tenant an N12 notice of termination [deemed served on {April 5, 2022}] with the termination date of June 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by himself.

Declaration

4. 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. The Landlord has submitted an Affidavit dated April 7, 2022 that states that he is the owner of the rental unit, that he is making the affidavit in good faith and that it specifies that he will occupy the rental unit for one year or longer.

Compensation of 1 month

5. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022. This was by means of a Toronto-Dominion Bank money order dated March 30, 2022. The Landlord has confirmed that this money-order has not been cashed at the time of the hearing.

Compensation of Rent after the Termination date

6. The Tenant was required to pay the Landlord \$14,820.82 in daily compensation for use and occupation of the rental unit for the period from July 1, 2022 to January 12, 2023.
7. Based on the Monthly rent, the daily compensation is \$75.62. This amount is calculated as follows: \$2,300.00 x 12, divided by 365 days.
8. The Landlord by his own admission stated that a rent deposit of \$2,300.00 was collected from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
9. The Tenant submitted that she has been a Tenant since 2015, that there may have been an agreement to sell the rental unit to Tenant however the Tenant did not submit any documents to support this submission. Nonetheless based on the Tenant's submission this matter is being filed in the upper level courts for resolution.
10. 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 14, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant has lived in the rental unit since 2015 and has submitted that although she has been paying \$2,300.00 for rent since moving in, comparable unit rents have increased and it may take additional time to locate comparable accommodation.

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 April 14, 2023.
2. If the unit is not vacated on or before April 14, 2023, then starting April 15, 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 April 15, 2023.
4. The Tenant shall pay to the Landlord \$14,820.82, which represents compensation for the use of the unit from July 1, 2022 to January 12, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$75.62 per day for the use of the unit starting January 13, 2023 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before March 14, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 15, 2023 at 5.00% annually on the balance outstanding.
7. If the Tenant has not cashed the Toronto-Dominion Bank money-order as noted in the Determinations section paragraph 5 and it has become "stale-dated" – the Tenant may return the money order to the Landlord and use it as an "off-set" for any rental arrears that have accrued.

March 3, 2023
Date Issued

Peter Pavlovic
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 15, 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.