



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

Citation: Ward v Austin, 2023 ONLTB 13725

Date: 2023-03-01

File Number: LTB-L-019145-22

In the matter of: Upper Unit, 52 Queen's Circle
Crystal Beach ON L0S1B0

Between: Mackenzie Ward Landlord

And

Amanda Austin Tenant

Mackenzie Ward (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Austin (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.

This application was heard by videoconference on December 1, 2022.

The Landlord, the Landlord's representative W Cavacas and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The tenancy between the Landlord and the Tenant will be terminated.
2. On February 27, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. The Landlord claimed that they require vacant possession of the rental unit for the purpose of residential occupation for the Landlord's own use.
3. Section 48.1 of the *Residential Tenancies Act, 2006* (the "Act") requires the Landlord to provide compensation to the Tenant in an amount equal to one month's rent where an N12 notice is served. The Landlord testified that a cheque in the amount of \$1,350.00, in excess of one month's rent, was hand delivered to the Tenant on April 30, 2022. The Tenant did not deposit that cheque. The Landlord then sent an e-transfer to the Tenant, which was not successful. The Landlord sent a second e-transfer to the Tenant in the amount of \$1,350.00 that was accepted by the Tenant on June 6, 2022. I find that the Landlord attempted to pay the compensation owed by the termination date of April 30, 2022, but the Tenant did not deposit the cheque provided. I do not find that the Tenant's

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failure to deposit the cheque tendered invalidated service of the compensation. Additionally, the Landlord made two further attempts to e-transfer the funds, which the Tenant ultimately accepted. I find that the Landlord fulfilled her responsibility to provide compensation by the termination date in the notice.

4. The Landlord testified that she purchased the rental unit for her personal occupation and that she brought this application to obtain possession so that she can move into the rental unit.
5. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement set out in subsection 48(1) of the Act which provides:

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 by:

- (a) the landlord

The Landlord’s good faith intention

6. The onus is on the Landlord to establish that the Landlord in good faith requires the rental unit for the purpose of residential occupation.
7. The Landlord provided clear, consistent and uncontested evidence that she intends to move into the rental unit for at least one year. She provided uncontested evidence that she purchased the duplex and intends to reside in the unit for a minimum of one year for residential occupation as this unit is closer to her place of employment.
8. The Tenant testified that they doubted the good faith of the Landlord because the Landlord bought a duplex and the Landlord could have chosen to live in the other unit in the duplex.
9. The reasonableness of the Landlords’ intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A Landlord need not establish that his requirement is reasonable, only that he bona fide wanted and genuinely had the immediate intention to occupy.

10. I find therefore that the reasonableness of the Landlord’s intention to move into this rental unit, versus any other that they own, is not relevant to the issues of intention or good faith. Although alternatives may be available to the Landlord, it is not for the Board to determine what unit would be “most reasonable” for the Landlord to reside in; the Board’s determination is whether there is good faith and genuine intention to reside in the unit
11. I find the Landlord’s evidence to be credible and her testimony to be consistent. The Tenant’s submissions did not provide any evidence to the contrary or to contradict the Landlord’s evidence.
12. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord’s testimony or their good faith intentions. I am therefore satisfied on the balance of probabilities, that the Landlord in good faith requires possession of the rental

unit for the purpose of residential occupation and that she genuinely intends to reside in the unit for at least one year.

Relief from Eviction

13. The Landlord sought a standard 11 day order terminating the tenancy of the Tenant as they require the unit for personal occupation. The Landlord currently resides in the home of her parents. The Landlord purchased the duplex on February 24, 2022 with the intention of residing in the unit as this unit is closer to the Landlord's place of employment.
14. The Tenant requested that the application of the Landlord to terminate the tenancy and evict the Tenant be denied. The Tenant testified that she is not currently employed, and is receiving Ontario Works payments. The Tenant has a 9 year old daughter, attending grade 4 in the local school area. The Tenant testified that she does not have a place to reside if eviction is granted.
15. Having turned my mind to the circumstances of both the Landlord and the Tenant to determine an appropriate termination date for the tenancy, I find that the tenancy should be terminated on April 30, 2023. I find this to be reasonable as the Tenant has had since February 27, 2022 to secure alternate housing and she will receive additional time to do so by my order.
16. 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*.
17. The Landlord collected a rent deposit of \$916.16 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$8.46 is owing to the Tenant for the period from February 24, 2022 to December 1, 2022.
18. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
19. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.

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 30, 2023.
2. 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.
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 May 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$27.95 per day for the use of the unit starting December 1, 2022 until the date the Tenant moves out of the unit.

5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.

March 1, 2023
Date Issued

Heather Kenny
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.