



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

Citation: Palozzi v Wilson, 2023 ONLTB 22621

Date: 2023-02-27

File Number: LTB-L-019202-22

In the matter of: 229 WAVERLY ST S
OSHAWA ON L1J5V3

Between: Rosa Palozzi Landlord

And

Jessica Wilson Tenants
Wally Wilson

Rosa Palozzi (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Wilson and Wally Wilson (the 'Tenants' or 'J.W. and 'W.W.', respectively) because:

- the Landlord's child 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 Tenants remained in the unit after the termination date.

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

The Landlord attended the hearing, was self-represented, and called her son Carmine Palozzi ('C.P.') as a witness. The Tenants attended the hearing and were self-represented.

Determinations:

1. This application involves a residential complex that is a detached house.
2. The Landlord requests an order terminating the tenancy so that the Landlord's son can occupy the unit for personal use.
3. For reasons that follow, the application is granted. The Tenants are to vacate the unit on or before August 31, 2023.

PRELIMINARY MATTERS

4. The Tenants raised one preliminary issue.
5. A request was made to adjourn the hearing so that they could obtain legal representation. This request was denied.
6. The Tenants stated that they received the Notice of Hearing in the first week of December 2022, which provided inadequate time to prepare for the hearing and, specifically, to retain legal representation. Elaborating further, the Tenants explained that there are a number of issues they would like to raise which they feel requires the assistance of a legal representative and, given the one-month time between receiving the Notice of Hearing and the hearing date, they were unable to find a representative nor properly prepare. The Tenant explained that upon receiving the Notice of Hearing, they contacted local legal clinics for assistance but were told that there was inadequate time for a prospective legal representative to prepare for and to attend the hearing.
7. The Landlord opposed the adjournment request stating that she filed her application quite some time ago and wished to have the application resolved. The Landlord's son, C.P., explained that any further delays would be prejudicial as he wished to move into the unit so that he could have his 'independence', which would be delayed if the matter was adjourned.
8. 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.

9. 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 Tenants made reasonable efforts to secure representation for the hearing given that they had approximately one-month to prepare. 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 request was denied.

10. At the end of the hearing I ordered the parties to submit documentation in the form of posthearing submissions. The parties submitted documentation which was considered in the reasons that follow.

THE L2 APPLICATION

11. The following facts are not in dispute:
 - a. The residential complex consists of a detached house.
 - b. An N12 notice of termination was delivered to the Tenants by the Landlord on March 21, 2022 informing them that the Landlord's son 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 \$1,248.00.
 - e. The Landlord and the Tenants dispute whether one-month's compensation was paid.
 - f. The Tenants have yet to vacate the rental unit.

Good faith

12. The evidence supports a finding that the Landlord's son intends, in good faith, to occupy the unit for residential purposes for at least one year.
13. Subsection 48(1)(c) of the Act provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord's child in good faith requires possession of the unit for residential occupation for a period of at least one year.
14. 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.
15. 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

16. The Landlord testified that she purchased the house for her children to live in, and that her son will reside in the house "forever", although she does not specifically know the length of time he will actually live in the unit.
17. C.P. testified that he is the son of the Landlord and the person intended to move into the unit. He also testified that he had direct knowledge of the tenancy as was involved with the Tenants during the course of the tenancy.
18. C.P. explained that he would move into the unit "fairly quickly", which he clarified could be within two weeks of the Tenants vacating the unit as he would be required to perform limited preparation before moving in (i.e., painting and cleaning), and that he intends to reside in the unit for at least one year.

Tenants' evidence

19. J.W. testified on behalf of both Tenants, stating that the Landlord issued the N12 Notice in an attempt to avoid performing long-standing maintenance issues they had raised for several months, issues which they followed-up with the Landlord about on a regular basis. The N12 notice is one of many attempts to terminate the tenancy to avoid these issues, explaining that the Landlord had issued N4 and N5 notices over other issues that were trivial. J.W. also asserts that this is the true purpose for the application as the Landlord's son resides with his mother in a stable housing arrangement.
20. Elaborating further, J.W. indicated that beginning in August 2020 (and reported to the Landlord again in September 2021), the Tenants reported mold growth in the unit, which the Landlord and C.P. advised them would be addressed when C.P. moves into the unit. Shortly following this, they received an N4 notice of termination alleging outstanding rent (which they believe was unjustified) and later, an N5 notice of termination in relation to a modification installed on the deck of the unit by the Tenants, all of which they view as a form of harassment aimed at motivating the Tenants to move.
21. Other issues had been raised by the Landlord which the Tenants view as harassment which include the following examples: (i) the aforementioned deck modification that was added to keep their dog and the neighbour's dog from barking; (ii) an issue regarding a shed that was built seven years earlier that became a source of conflict after the mold issue was raised; and (iii) demands for tenant insurance that is not part of the tenancy agreement nor is it mandatory.
22. Taken together, the Tenants are of the view that the N12 notice was not issued in good faith but for the purpose of avoiding addressing their complaints of mold. Neither the

Landlord nor C.P. disputed the presence of mold specifically, however, denied all of the allegations made by the Tenants.

Analysis

23. I find that, based on the evidence presented, and in accordance with the courts decision in *Feeney* and in *Salter*, the Landlord, in good faith requires possession of the rental unit for her son's use as indicated in the N12 notice. I am satisfied that the Landlord has a genuine intention to occupy the premises and, as such, issued the N12 notice in good faith.

Compensation

24. The evidence supports a finding that the Landlord paid one-month compensation to the Tenants in compliance with the Act.

25. In response to questions posed by the Board, the Landlord testified that she provided onemonth compensation by waiving the rent for April 2022, which was explained in a series of letters sent to the Tenants. Submitted to the Board as post-hearing submissions by both the Landlord and the Tenants was one of those letters (dated March 21, 2022) which indicates that rent for April 2022 and May 2022 (the intended last month of the tenancy) would not be required in accordance with the N12 Notice.

26. In response to questions posed by the Board regarding compensation, J.W. testified that the Tenants did not receive one-month compensation but decided not to pay rent for April 2022 as this was, in their view, their last month of the tenancy to which their deposit was to be applied. They denied having had a discussion with the Landlord that rent for April 2022 would be waived as the one-month compensation they are entitled to.

27. After searching for a new unit to move to, and learning of the financial barriers to moving at that time, they remained in the unit past the date of termination indicated on the N12 notice, and continued to pay their rent beginning in May 2022. Thus, they concluded that their last month deposit (which was paid in 2003 when they first occupied the unit) was applied, and that compensation in relation to the N12 was not provided by the Landlord.

28. Reinforcing the view that the Tenants had about not receiving the one-month compensation, is the size of the deposit (which was \$500.00) that is not equal to their monthly rent at the time of the hearing (valued at \$1,148.60 per month) and thus, could not be considered the one-month compensation they are entitled to. C.P. contested this, explaining that they did discuss with the Tenants that April 2022 would be waived as the one-month compensation, and that the deposit would be applied to the last month of the tenancy which was originally intended to be May 2022. However, as the Tenants had yet to vacate the unit, they were required to continue paying rent until the tenancy actually ends.

Analysis

29. Subsections 48.1, 55.1 and 83(4), when read together, require that landlords who terminate a tenancy for personal use must provide one-month's compensation no later than the termination date indicated on the notice, and the Board is prohibited from ordering an eviction if a landlord had not complied with these provisions.
30. Subsection 106(10) provides that a landlord shall apply a rent deposit paid by a tenant to the last rent period before the tenancy terminates.
31. I am prepared to accept that a rent credit may satisfy the requirement of one month rent compensation under section 48.1 of the Act, provided at least two conditions are met: (i) the rent abatement must be for a period of time prior to the termination date set out in the N12 notice; and, (ii) the Landlord must have clearly communicated prior to the termination date in the notice of termination their intention to provide a rent abatement in satisfaction of the one month's compensation requirement under section 48.1.
32. Based on the evidence, I find that the Landlord did satisfy their obligation to provide onemonth's compensation prior to the date of termination indicated in the N12 pursuant to subsections 48.1 and 55.1 of the Act.
33. This is confirmed by the letter dated March 21, 2022, submitted by both parties in response to my request for post-hearing submissions, which indicated that the Landlord was waiving rent for April 2022 in association with the N12 and that, at that time, rent for May 2022 would also be waived as this was the intended last month of the tenancy in accordance with section 106 (10) of the Act. I also accept the Landlord's evidence that they continue to hold the rent deposit which they intend to apply to the last month of the tenancy.

Relief from Eviction

34. Subsection 83(3)(a) of the Act provides that the Board shall refuse to grant the application where satisfied that the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement.
35. The Act does not define "serious breach".
36. The leading case which outlines the test for a "serious breach" is *Puterbough v. Canada Public Works and Government Services* [2005] O.J. No 5727. In that case, the court described a "serious breach" in the context of a landlord's maintenance obligation "means more than the rental premises being in a poor condition and in need of significant work...In short, a serious breach of the landlord's responsibilities is not established simply by the rental premise being in need of extensive repairs".

37. In *Puterbough*, the Divisional Court outlined this test for “serious breach” of maintenance in a case where there was evidence that the properties in question would have had to be demolished.
38. The purpose of subsection 83(3)(a) of the Act is to ensure landlords do not rely on an eviction of tenants as a means of circumventing their statutory obligations under the Act. That said, when addressing a tenant’s arguments pertaining to the landlord’s alleged breaches in that case, the Court went on to state: “To accept the Tenant’s argument that all breaches of the Landlord’s responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word ‘serious’ in that subsection.”
39. Based on the evidence presented at the hearing pertaining to mold in the unit, I am not satisfied that the Tenants have established a “serious breach” within the meaning of s. 83(3)(a) of the Act in relation to this issue. This finding is limited to the purpose of s. 83 of the Act however, and is not meant to preclude the Tenants from pursuing a maintenance application against the Landlord should they so choose.
40. 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 6 months until August 31, 2023.
41. Both Tenants testified to the impact an eviction would have on them and their children, explaining that they are a single income family who have lived in the unit for over 20 years. Their children (8 and 17 years of age) were born in the community, attend school in the local area, and have significant connection to their schools, their neighbours, and the community. The unit and the community is the only home the children have known and would require significant planning to move. The Tenants also testified to the financial challenges looking for a new home would bring given that they are a single income family in which W.W. is the sole income earner.
42. In response to questioning from the Board, the Landlord explained that any further delay in granting the application would be prejudicial to her and her son as the Tenants have had adequate time to move.
43. C.P. explained the prejudice he would experience should the Board delay or deny terminating the tenancy, stating that he would experience significant prejudice as he is moving into the house so that he could have his “independence”, which he was unable to clarify in further detail when asked. The evidence at the hearing was that he currently resides with the Landlord and there was no evidence led that the Landlord was selling her personal residence.
44. Considering all of the evidence and, notwithstanding the Landlord in good faith requires possession of the rental unit for her son’s personal use, I find that, pursuant to subsection

83(1)(b) that it would not be unfair to the Landlord to delay the eviction for 6-months until August 31, 2023 due to the significant impact an early eviction would have on the Tenants and their children.

45. Given the Tenants' connection to the community and schooling needs of their two children, I am satisfied that they may experience challenges securing housing that fits their needs such that more time is required. By contrast, the Landlord and her son continue to have stable housing as the house is not being sold but is to be occupied by the Landlord once her son moves into the rental unit. While I acknowledge that the unit in which the Landlord's son lives no longer meets his needs, after considering the totality of the circumstances I conclude that delaying eviction for a further 6 months from the date of this order is fair and appropriate.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before August 31, 2023.
2. If the unit is not vacated on or before August 31, 2023, then starting September 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 September 1, 2023.
4. The Tenants shall also pay the Landlord compensation of \$37.76 per day for the use of the unit starting January 10, 2023 until the date the Tenants moves out of the unit less any amount already paid.

March 6, 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 March 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.

