



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

Citation: Mccutcheon v Mcdonald, 2023 ONLTB 21104

Date: 2023-02-22

File Number: LTB-L-021276-22

In the matter of: Lower, 495 PAPE AVE
Toronto ON M4K3R1

Between: Lisa Lemoyne Howarth\n Timothy Ian Mccutcheon Landlord

And

Kevin Mcdonald Tenant

2023 ONLTB 21104 (CanLII)

Lisa Lemoyne Howarth and Timothy Ian Mccutcheon (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Mcdonald (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 January 25, 2023.

The Landlord, the Tenant, and the Tenant's legal representative, Michelle Mort, attended the hearing.

Determinations:

1. The Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the application is granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 28, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Tenant's child.
4. The Landlord in good faith requires possession of the rental unit for the purpose of their child's residential occupation for a period of at least one year.
5. The Landlord testified that in April 1, 2022 they waived the rent owing for April in satisfaction of their obligation to pay the Tenant compensation equal to one month's rent. In response, the Tenant stated that they prefer to pay this rent and they did so. To date, the Landlord has not returned this amount based on the Tenant's decision to repudiated the waiver.

6. The Tenant testified they elected to pay the rent for April to frustrate the Landlord's effort to advance their claims.
7. I determined that the Tenant is not permitted to frustrate the Landlord's opportunity to waive rent in satisfaction of the obligation to compensate the Tenant. As such, I determined that by informing the Tenant of the waiver of April's rent before the termination date in the Notice of Termination the Landlord has met this obligation, irrespective of the Tenant's decision to pay their rent owing for this period in any event. That said, it would be inappropriate for the Landlord to be unjustly enriched by being allowed to retain April's rent. As such, I will order the Landlord to return this payment.
8. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
9. The Landlord collected a rent deposit of \$1,400.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$0.00 is owing to the Tenant for the period from April 1, 2022.
10. 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.
11. 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 June 1, 2023 pursuant to subsection 83(1)(b) of the Act. Specifically, the Tenant testified that they require this much time to find alternative accommodations given the "aggressive" nature of the rental housing market. On the other hand, the Landlord opposed delayed termination because the Landlord's son wants to move into the unit to be closer his place of employment in Toronto. As between these competing interests, I determined that the Tenant would experience greater prejudice as they are at risk of homelessness if not given a reasonable opportunity to relocate.

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 June 1, 2023.
2. If the unit is not vacated on or before June 1, 2023, then starting June 2, 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 2, 2023.
4. The Tenant shall also pay to the Landlord \$186.00 for the cost of filing the application.

February 23, 2023
Date Issued

 Sean Henry
 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 December 2, 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.