



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

Citation: Dutta v Luckman, 2023 ONLTB 20609

Date: 2023-02-22

File Number: LTB-L-026105-22

In the matter of: 1 MARLBOROUGH ST
BRAMPTON ON L6S2T3

Between: Dev Vishnu Dutta Landlords
Sonia Dutta

And

Felicia L Hall
Jason R Luckman
Tayjah Luckman
Tishay Luckman
Tyrone Luckman Tenants

Dev Vishnu Dutta and Sonia Dutta and (the 'Landlords') applied for an order to terminate the tenancy and evict Felicia L Hall, Jason R Luckman, Tayjah Luckman, Tishay Luckman, Tryston Luckman, Tyler Luckman and Tyrone Luckman because the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 25, 2023.

The Landlords and two of the Tenants, Felicia Hall and Jason Luckman, attended the hearing.

The application is amended to remove the name of two of the originally named Tenants, Tryston Luckman and Tyler Luckman, because they are minors. Throughout the rest of the order, the term "Tenants" refers to the remaining five tenants named in the application.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated effective August 31, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On May 4, 2022, the Landlords gave the Tenant an N12 notice of termination, deemed served on May 9, 2022, with the termination date of July 14, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential

occupation by one of them – Dev Vishnu Dutta. Dev Dutta is one of the Landlords and he is also the son of the other Landlord, Sonia Dutta.

4. At the hearing, the Landlords testified that Mr. Dutta currently lives with his parents, and he intends to move into the rental unit because he is turning 30 and he wants to start his own life. Mr. Dutta testified that he is getting married soon and he intends to live in the rental unit with his partner for at least 4 – 5 years.
5. The Tenants challenged Mr. Dutta's intention to move into the rental unit. They testified that over the past few years, the Landlords have only expressed Mr. Dutta's intention to move into the rental unit during their discussions about renewing the tenancy agreement. The Tenants testified that they had these discussions with Ms. Dutta's husband. They testified that each year, Ms. Dutta's husband asked them to increase the rent. They testified that they began pushing back against the rent increases in 2019 and that is when Ms. Dutta's husband began mentioning his son's plan to move into the rental unit.
6. The Tenants testified that they also feel there is a connection between the Landlords wanting to evict them and the Tenants' refusal to sign a letter for their insurance company. The Tenants testified that the Landlords asked them to sign a letter about their use of the basement in the rental unit for insurance purposes, but the Tenants refused to do so and this occurred in May 2022. The Tenants testified that a few days after they communicated their refusal to the Landlords, they received the N12 notice of termination.
7. In reply, Mr. Dutta testified that he had no knowledge of his father's conversations with the Tenants about renewing the lease. He testified that he has been asking his parents to move into the rental unit for the past several years. Ms. Dutta testified that her understanding of the conversations between her husband and the Tenants was that each year, her husband told the Tenants that their son was planning to move into the rental unit and the Tenants responded by offering to pay more rent. She testified that the increased rent was the result of the parties' negotiations and mutual agreement. Ms. Dutta also testified that she asked the Tenants to sign the letter for her insurance in May 2022 because her insurance company required it, but the Tenants' refusal to do is not connected to the Landlords' service of the N12 notice.
8. On the balance of the evidence before me, I find that the Landlord, Dev Dutta, in good faith requires possession of the rental unit for the purpose of his own residential occupation for a period of at least one year.
9. Mr. Dutta was consistent and unwavering in his evidence that he intends to move into the rental unit, and he has been planning to do so for several years. The parties do not dispute that Ms. Dutta's husband has also been mentioning his son's intention to move into the rental unit for several years. The fact that the Landlords postponed this plan and chose to renew the tenancy agreement and increased the rent does not undermine Mr. Dutta's intention. There is insufficient evidence before me to conclude that the only reason the Landlords served the N12 notice was either because the Tenants pushed back against the rent increases or refused to sign the insurance letter.
10. The parties do not dispute that the Landlords compensated the Tenants an amount equal to one month's rent by July 14, 2022.

11. The parties do not dispute that as of the hearing, the Tenant was up to date on his rent. The rent is due on the 15th day of each month. Therefore, the daily compensation will begin to run from February 15, 2023. Based on the Monthly rent, the daily compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
12. There is no last month's rent deposit.
13. 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 August 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenants testified that if the application is granted, they would need a year to move out. The Tenants have been living in the rental unit since July 2017. They live in the rental unit with their five children who range in age from 10 – 26 years old. Their children attend school or work close to the rental unit. They attend a nearby church. Their children are involved in the community. On the other hand, the Landlord, Mr. Dutta, testified that he is prepared to move into the rental unit right away. However, Mr. Dutta's evidence does not establish that he has an urgent need to move into the rental unit. He currently has a place to live that is close to the rental unit and his work. Therefore, I find it appropriate to postpone eviction by six months, which represents a compromise between the Landlord's request for immediate eviction and the Tenants' request for a year. This will give the Tenants time to find another place to live.

It is ordered that:

1. The tenancy between the Landlords 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 Landlords 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 Landlords on or after September 1, 2023.
4. The Tenants shall also pay the Landlords compensation of \$82.19 per day for the use of the unit starting February 15, 2023 until the date the Tenants move out of the unit.

February 22, 2023
Date Issued

 Anna Solomon
 Vice Chair, 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.