



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

Citation: info v Hamilton, 2023 ONLTB 19762

Date: 2023-02-16

File Number: LTB-L-025588-22

In the matter of: 232 SOPHIA CRES
KITCHENER ON N2R1X8

Between: info Landlord
Boris Budinski

And

Alicia Hamilton Tenant
Michael Hamilton

info and Boris Budinski (the 'Landlord') applied for an order to terminate the tenancy and evict Alicia Hamilton and Michael Hamilton (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 25, 2023.

The Landlord, the Landlord's legal representative, Howard Tavroges, the Tenant and the Tenant's legal representative, Emily Hiil, attended the hearing.

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. Therefore, I the application is granted.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On April 14, 2022, the Landlord gave the Tenant an N12 notice of termination 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 themselves.
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. In coming to this conclusion, I attached determinative weight to the Landlord's testimony in this regard, and less weight to the Tenant's speculative belief that the Landlord would not want to move into the rental unit, primarily because the garage door is seized.
5. The Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022.
6. The Tenant was required to pay the Landlord \$10,815.66 in daily compensation for use and occupation of the rental unit for the period from July 1, 2022 to January 25, 2023.

7. Based on the Monthly rent, the daily compensation is \$51.75. This amount is calculated as follows: $\$1,574.05 \times 12$, divided by 365 days.
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 \$1,574.05 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$28.21 is owing to the Tenant for the period from February 1, 2018 to January 25, 2023.
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 16, 2023 pursuant to subsection 83(1)(b) of the Act.
12. 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 grant relief from eviction subject to the conditions set out in this order pursuant to subsection 83(1)(a) and 204(1) of the Act. Specially, a primary hardship experienced by the Landlord is that their spouse must drive their child a relatively short distance to school from their current residence. On balance, this inconvenience is less prejudicial than the hardship faced by the Tenant finding near-term housing for themselves and their minor children, who are 7,5,3 and 1 years old, especially given the Tenant's uncontested testimony that prospective landlords have refused to rent to the Tenant because of the age and number of their children.

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 16, 2023.
2. If the unit is not vacated on or before June 16, 2023, then starting June 17, 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 17, 2023.
4. The Tenant shall pay to the Landlord \$9,213.40, which represents compensation for the use of the unit from July 1, 2022 to January 25, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$51.75 per day for the use of the unit starting January 26, 2023 until the date the Tenant moves out of the unit.

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

February 16, 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 17, 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.