



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

Citation: Halifax v Howell, 2023 ONLTB 18110

Date: 2023-02-10

File Number: LTB-L-025190-22

In the matter of: 617 KRUG ST
KITCHENER ON N2B1L9

Between: Allan Halifax Landlord

And

Alana Schell Tenants
Nick Howell

Allan Halifax (the 'Landlord') applied for an order to terminate the tenancy and evict Alana Schell and Nick Howell (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 24, 2023.

Jane Dean attended as an Agent on behalf of Lisa Nadon the legal representative for the Landlord, the Landlord, the Tenant's Legal Representative Carlo Gazze and the Tenants 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, an order for delayed eviction shall be issued.
2. On April 28, 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 for their own use.

3. The Landlord testified that he intends to move back into the rental unit for his own use for at least a year. He stated that he has his own health issues that need to be addressed, and that he has his own challenges finding suitable accommodation that he can afford. He testified that he is currently staying with friends, but that would not last long and he did not know where he would reside after that.
4. The Landlord's testimony stood up under cross-examination. I found that the Landlord was a credible witness, that he genuinely in good faith requires the rental unit. In particular, he resisted the suggestions that he was only seeking rid himself of Tenants that had complained to him about maintenance issues. In addition, the Landlord affirmed that he intended to reside in the rental unit for a period of at least one year.
5. The Tenant Nick Howell testified regarding his relations with the Landlord and regarding the condition of the rental unit. He testified that the due to a water leak in the main shower that the family uses the basement washroom to shower. He admitted that he did not notify the Landlord of this. He also testified about other maintenance issues that he had repaired himself and deducted the costs from monthly rent. He also indicated that the dishwasher does not work and that it was reported to the Landlord and has not been repaired.
6. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762 ("Feeney"), the Ontario Divisional Court made a decision under a similar provision in subsection 103(1) of the *Landlord and Tenant Act*, R.S.O. 1990, c. L.7, and held that: "...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
7. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the "good faith" requirement under subsection 51(1) of the *Tenant Protection Act*, 1997, S.O. 1997, c. 24. The Court referred to *Feeney, supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
8. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) ("Fava"), the Divisional Court, in considering the good faith requirement in s.48(1) of this Act, determined as follows:

"We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."
9. Thus, the Board may consider the motives and conduct of a landlord in determining the issue of good faith and to draw inferences about the landlord's intentions based upon the totality of the evidence presented.

10. The Landlord here bears the onus of proving, on a balance of probabilities, that he intends to reside in the rental unit as required by s.48 of the Act.
11. The Landlord's declaration did not indicate that the Landlord intended to occupy the rental unit for a period of at least one year as is required under the Act.
12. The Landlord testimony and cross examination at the hearing cured this defect and the Board was satisfied that the Landlord intends to occupy the rental unit for a period of at least one year.
13. In considering the totality of the evidence and the submissions in all the circumstances the Board is satisfied on a balance of probabilities that 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.
14. It was uncontested that the Landlord has compensated the Tenant an amount equal to one month's rent by June 30, 2022.
15. Based on the Monthly rent, the daily compensation is \$42.74. This amount is calculated as follows: \$1,300.00 x 12, divided by 365 days.
16. There is no last month's rent deposit.
17. The Tenant acknowledged that the landlord/tenant relationship has some animosity and that they must move out. They requested that the Board exercise its discretion to delay eviction to the summer period. Their eldest child is in senior kindergarten and is adjusting well at school, given the home-schooling during COVID. The Tenant testified that he had checked the rental market and found that rents were almost double his current rent for a similar rental unit.
18. The Landlord submitted that they could accept a delay of up to eight weeks; however he did ask the Board to note that the Landlord does not have a firm place to reside if the eviction is delayed.
19. I was not satisfied that the Landlord was in serious breach of the Landlord's obligations under the Act. The maintenance issues raised were not so serious that the Tenant felt the need to advise the Landlord of them or resolved them themselves and deducted the costs from rent. Therefore, I am refusing to grant relief on this basis.
20. The Board takes note that the termination date was June 30, 2022; as such the Tenant has known for some time and acknowledged they will have to move out. The tenants were entitled to await a merit hearing and decision from the Board. The Tenant's did not provide any evidence of their search beyond checking what the market rent was in the area. As a result, I am satisfied that it is reasonable in all the circumstances to delay eviction until the end of March 2023, which is acceptable to the Landlord and affords the Tenants some additional time to find a new rental.
21. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.

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 March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 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 April 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$42.74 per day for the use of the unit starting April 1, 2023 until the date the Tenant moves out of the unit.

February 10, 2023

Date Issued

Robert Patchett

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 October 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.