



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

Citation: Shafqat v Al Saqqa, 2023 ONLTB 14300

Date: 2023-02-03

File Number: LTB-L-004123-22

In the matter of: UNIT 2, 2ND FLOOR, 5688 ROBINSON ST NIAGARA
FALLS ON L2G2B2

Between: Firdous Shafqat Landlord

And

Jessica Vanasse Verner Motaz
Rami Ahamad Al Saqqa

Tenants

Firdous Shafqat (the 'Landlord') applied for an order to terminate the tenancy and evict Jessica Vanasse Verner and Motaz Rami Ahamad Al Saqqa (the 'Tenants') 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 August 10, 2022. The Landlord, the Landlord's legal representative, Jayant Unny, the Tenants and the Tenants' legal representative, Deanna Seguin, attended the hearing.

Determinations:

1. On January 21, 2022, the Landlord gave the Tenants an N12 notice of termination which indicated that the Landlord intended to move into the rental unit for their own personal occupation. The termination date in the notice is April 9, 2022. This is the last day of the rental period.
2. The Tenants agreed that they received one month's rent as compensation on November 22, 2021. Therefore, I find that the Landlord has met the requirements under section 55.1 of the *Residential Tenancies Act, 2006* (the 'Act') to pay the Tenants the compensation prior to the termination date in the notice.
3. The Landlord also filed with the Board an Affidavit in accordance with subsection 72(1)(a) of the Act which provided that the Landlord requires the rental unit for their own personal use in good faith for a period of at least one year.
4. The Tenants did not believe that the Landlord intended on moving into the rental unit on the basis that the Tenants believed that they received the notice as a result of complaining to the Landlords sister, "Mum", regarding an unpaid utility bill and based on their

knowledge of the Landlord having mobility issues and the rental unit is located in the upper unit which requires stairs to access it. The Tenants had also been provided with different reasons why the Landlord needed the unit. Such as that they needed it for staff for the Landlords restaurant. They indicated that it was the Landlord's daughter, Saba, who had told them about sponsoring people to work at the Landlords restaurant and that Saba had also indicated that the Landlord wanted the unit for their son. The Tenants indicated that they were aware that a purchaser attended the property to have a look as well.

5. With respect to the mobility issue claim, the Tenants asserted that when the Landlord was showing them the unit, she had complained that she had sore needs and had difficulty with stairs.
6. The Landlord indicated that she does not have mobility issues and the Landlord submitted a doctors note in support of her position which was dated on March 4, 2022. The Landlord also lives in a house that has stairs to access the bedrooms and the Landlord testified that they have no problem getting up stairs and that they spend most of their days on their feet being a chef in the restaurant she owns close to the rental unit. The Landlord indicated that she wanted to move into the rental unit so that she could be closer to work and that she intends on living in the rental unit for even more than a year.

Analysis

7. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
8. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under 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".

9. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

10. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found 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.”

11. While there was evidence given by both Tenants regarding differing reasons why the Landlord does not have a genuine intent to occupy the rental unit, I did not find the evidence of the Tenants purely credible. While one Tenant recalled certain conversations where they were both present with either Mum or Saba, the other Tenant recalled a different version of events with different participants. Neither Tenant could recall exact dates on the proposed conversations. Because of their inconsistent testimony, I afford it little weight.
12. On a balance of probabilities and based on the evidence before me, I find that the Landlord has a genuine intent to occupy the rental unit for the purpose of residential occupation for at least one year and that they require the rental unit in good faith.
13. The Tenants requested that if the Landlord was successful on their application that they be able to stay in the unit until their school was done which was at least 6 months after the hearing date. They find the monthly rent affordable and have been unable to locate alternative housing and they don't want a move to interfere with their studies.
14. The Landlord was not opposed to granting a delay for the Tenants, but indicated that they would like to have the property back for the new year so that they can do some renovations prior to moving in.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until February 28, 2023 pursuant to subsection 83(1)(b) of the Act.

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 February 28, 2023.

2. If the unit is not vacated on or before February 28, 2023, then starting March 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 March 1, 2023.

February 3, 2023

Date Issued

Terri van Huisstede

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 August 29, 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.