



**Order under Section 69 / 88.2
Residential Tenancies Act, 2006**

Citation: Tabrizi v Primo, 2023 ONLTB 17333

Date: 2023-01-31

File Number: LTB-L-023913-22

In the matter of: 3371 CACTUS GATE
MISSISSAUGA ON L5N8B2

Between: Masrour Tabrizi and Melodi Kayali Landlord

And

Debby Primo Tenant

Masrour Tabrizi and Melodi Kayali (the 'Landlord') applied for an order to terminate the tenancy and evict Debby Primo (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.

Masrour Tabrizi and Melodi Kayali (the 'Landlord') also applied for an order requiring Debby Primo (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on January 23, 2023.

The Landlord's legal representative, Colin James Mitchell, and the Landlord, attended the hearing.

Determinations:

1. On April 2, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served by handing the notice to the Tenant, with the termination date of June 26, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation for his own personal use with his wife and young daughter.
2. The rental unit is a detached four bedroom house with a two car garage.
3. Pursuant to s. 48 of the Act:

Notice, landlord personally, etc., requires unit

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

 - (a) the landlord;
 - (2) The date for termination specified in the notice shall be at least 60 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
4. The N12 notice gives the Tenant over 60 days' notice and the termination date is the last day of the rental period (rent is due on the 27th of each month). The issue to be determined on this application is whether the Landlord has satisfied the "good faith" requirement in s. 48(1) of the Act.
5. It was the uncontested testimony of the Landlord at the hearing that he served the N12 notice because he requires the unit to be closer to his wife's place of employment. The Landlord also testified he is currently financially burdened by carrying two mortgages, as the Tenant owes arrears on the rental unit, and must sell his current house his family lives in now. On the day of the hearing the Landlord had not listed the house with an agent.
6. The Landlord has compensated the Tenant an amount equal to one month's rent by June 26, 2022, by giving the Tenant a bank draft on the day the Tenant was served the N12 notice.
7. The Landlord submitted as evidence his declaration stating he will reside in the rental unit for a period of no less than one year.
8. The Tenant was required to pay the Landlord \$20,810.96 in daily compensation for use and occupation of the rental unit for the period from June 27, 2022 to January 23, 2023.
9. Based on the Monthly rent, the daily compensation is \$98.63. This amount is calculated as follows: \$3,000.00 x 12, divided by 365 days.
10. The Landlord collected a rent deposit of \$3,000.00 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 July 3, 2019 to .

11. 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.
12. The Tenant failed to pay utility costs that they were required to pay under the terms of the tenancy agreement.
13. The Landlord has incurred reasonable out-of-pocket expenses of \$1,207.52 as a result of the Tenant's failure to pay utility costs for the Region of Peel from the period of July 3, 2021 to October 5, 2021.

S.83 CONSIDERATION FOR RELIEF

14. The Landlord testified the tenancy started July 2021. The Tenant lives alone and does not have any young children, or persons requiring special needs living in the rental unit with them.
15. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and, including submissions from the Landlord that the Tenant does not have young children or any persons with special needs that the Board needs to consider living with them, and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
16. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
17. This order contains all reasons for the determinations and order made. No further reasons will be issued.

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 February 11, 2023.
2. If the unit is not vacated on or before February 11, 2023, then starting February 12, 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 February 12, 2023.

4. The Tenant shall pay to the Landlord \$17,810.96, which represents compensation for the use of the unit from June 27, 2022 to January 23, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$98.63 per day for the use of the unit starting January 24, 2023 until the date the Tenant moves out of the unit.
6. The Tenant shall pay to the Landlord \$1,207.52, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.
7. The total amount the Tenant owes the Landlord is \$19,018.48.
8. If the Tenant does not pay the Landlord the full amount owing on or before February 11, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 12, 2023 at 5.00% annually on the balance outstanding.

January 31, 2023
Date Issued

Greg Brocanier
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 12, 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.

