



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

Citation: Ghanem v Soliman, 2023 ONLTB 15563

Date: 2023-01-18

File Number: LTB-L-020495-22

In the matter of: 1152 PELISSIER ST
WINDSOR ON N9A4L9

Between: Salem Ghanem Landlord

And

John Soliman Tenant

Salem Ghanem (the 'Landlord') applied for an order to terminate the tenancy and evict John Soliman (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 10, 2023.

The Landlord and the Tenant attended the hearing. Landlord's Legal Representative R. Lammers and Landlord's witness Robert Ghanem were also present.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of February 28, 2023.
2. The Tenant is in possession of the rental unit.
3. On January 28, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served the same day with the termination date of April 30, 2022. The Landlord claims that

they require vacant possession of the rental unit for the purpose of residential occupation by his child.

Good faith

4. The burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation by his child.
5. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...'. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
6. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC)).
7. The Landlord testified that the residential complex contain four separate 2-bedroom units. The Landlord's son graduated from university and has started a job and would now like to move out of the family home and live an independent life.
8. The Landlord's son Robert Ghanem testified that he would like to live at the rental unit for at least one year. He also testified that he works in Windsor.
9. The Tenant testified that after the Landlord acquired the building, he tried to raise the rent for all the units in the residential complex just three months prior to the N12 being served to him. He testified that two Tenants agreed to the unlawful rental increase and since he did not agree with the rental increase, he was being evicted in bad faith. He alleges that the Landlord wanted more money that is why the N12 was served.
10. The Tenant feels he has been wronged and that if he had agreed to the rental increase, he would not be here. The Tenant put into evidence the texts from the Landlord to increase rent.
11. The Landlord testified that he did give all the Tenants an option to increase their rent but did not force anyone. There are two units in the building that choose to increase rent and two did not. He gave the N12 notice to only one of the Tenants. He also testified that whichever Tenant he would have chosen to give a notice to would have asked the same question- Why that unit? He further clarified that his son chose to be on the higher floor that is why this Tenant was served with the N12.
12. I find that the Landlord does require possession of the rental unit in good faith as I accept his son's testimony about his genuine intention to move into the rental unit for at least one

year. The Landlord was honest in his testimony that he will not evict Tenants who pay him more rent out of the four units. That left him two units to choose from, for his son to occupy in the fourplex, the son chose the unit which was higher up. I did not find it to be unreasonable by any standards. The Tenants point that he was served a N12 because he is paying less rent is valid too and the Landlord did not deny that, but he also said he did not force anyone to pay more rent. The Landlord's son has good faith intentions to move into the unit well knowing that the Tenant will find out if he does not through other Tenants in the residential complex. Based on a balance of probabilities, I find the Landlord has not shown any bad intentions in serving the N12 notice even though there were discussions on increasing the rent when he acquired the building.

Compensation

13. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2022 via a cheque. The Tenant has not cashed the cheque given by the Landlord. Since the cheque maybe void due to time elapsed since it was issued, the Landlord shall compensate the Tenant as per s.48.1.
14. The Tenant was required to pay the Landlord \$5,449.32 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to January 10, 2023. The Tenant has been up to date with his rental payments so no payments are required.
15. The Landlord collected a rent deposit of \$650.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$57.59 is owing to the Tenant for the period from October 29, 2016 to February 28, 2023.
16. 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.

Relief from eviction

17. 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 February 28, 2023 pursuant to subsection 83(1)(b) of the Act. The extra time is being given to Tenant based on the fact that he is a student with limited means and may need extra time to find a suitable accommodation to rent without disruptions to his study schedule.

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 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.
4. The Landlord shall apply the last month's rent deposit to the February 2023 rent. The Landlord shall also pay the Tenant \$57.59 as interest on last month's rent deposit.
5. The Landlord shall also pay the Tenant compensation equal to one month's (\$650.00).
6. The total amount the Landlord owes the Tenant is \$707.59.
7. If the Landlord does not pay the Tenant the full amount owing on or before January 25, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 26, 2023 at 5.00% annually on the balance outstanding.

January 18, 2023

Date Issued

Sheena Brar
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 28, 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.

