



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

Citation: Kahale v Comber, 2023 ONLTB 14132

Date: 2023-01-10

File Number: LTB-L-001043-21

In the matter of: Basement Unit, 16 QUEENSGATE CRT
Markham ON L3R8L5

Between: Neda Haghghian Roodsari Landlords
Paul Gerges Kahale

And

Tom Comber Tenant

Neda Haghghian Roodsari and Paul Gerges Kahale (the 'Landlords') applied for an order to terminate the tenancy and evict Thomas aka Tom Comber (the 'Tenant') because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on December 5, 2022.

The Landlords and the Tenant attended the hearing. The Landlords were represented by Alireza Hesami. The Tenant was represented by Bitu Di Lisi.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application shall be granted, and the Tenancy is terminated effective January 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 7, 2021, the Landlords gave the Tenant an N12 Notice of Termination with the termination date of February 28, 2022. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords.
4. The Landlord, Neda Haghghian Roodsari filed a sworn affidavit indicating that they (the Landlords) currently live on the main floor of the property and personally require the rental unit (basement) in good faith and require the rental unit for his or her own personal use for a minimum of 1 year.

5. The Tenant raised a preliminary issue with the method by which the compensation was paid. However, it was undisputed that the Landlords compensated the Tenant an amount equal to one month's rent by February 18, 2022.

GOOD FAITH

6. The N12 was served pursuant to Section 48(1) of the *Residential Tenancies Act, 2006*, (the Act) which states in part:

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,

7. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that a sincere intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
8. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per *Salter*, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."

ANALYSIS

9. The Landlords testified that they require the full use of their home and intend to use the basement where the rental unit is located for each of them to have a separate home office. The Landlord submitted that they work for competing companies and require privacy in order to carry out their work. They added that their situation has changed as a result of covid-19, while their requirement to work from home was temporary during the lockdown, it is now permanent. They currently rotate around the main floor, which they find stressful and inconvenient.
10. They also told the Board that Neda Haghigian Roodsari's parents intend to move from Iran and live with them and occupy their spare bedrooms. They submitted that the added pressure of having additional people sharing the main living areas, further speaks to their need for separate workspaces in the basement.
11. The Landlord's served a previous N12 on the Tenant in August 2021, however it was not pursued as it was incomplete.
12. The Tenant disputed the Landlord's intentions and alleged that he believes they plan on using the rental unit for short term rentals. Despite this claim, no evidence was entered into evidence.

13. The Tenant testified that although there was a previous friendship, the relationship has become strained since receiving the initial N12 notice. He added that they have changed their plans with respect to the property a number of times over the years which has caused him to be sceptical of their intentions.
14. The Landlords did not dispute that there was a previous friendship and agree that they had considered selling the property in 2019 when Neda's company moved to Mississauga and the commute was becoming difficult. She told the Board that she commuted until the pandemic at which point, she began working from home.
15. The Tenant's representative took the position that using the rental unit for a home office does not constitute residential occupation. Although allowable uses of a rental unit have not been defined in the *Residential Tenancies Act, 2006*, it has been considered in a number of LTB and court decisions. It has been found that using a basement rental unit as home office/study where a landlord lives on the upper floors was found to be "residential occupation" so long as the scholarly, professional, business or other such activity does not constitute the predominant use. The Landlord has proven with evidence filed with the Board that Neda is required to work from home and therefore, I find that requiring the rental unit for their intended use as a home office meets the requirement under section 48 of the Act.
16. The Landlord has established on a balance of probabilities that the Landlords genuinely intend to use the rental unit for residential occupation for at least one year. Therefore, the Landlords in good faith require possession of the rental unit for a period of at least one year.

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 January 31, 2023 pursuant to subsection 83(1)(b) of the Act.
18. The Tenant testified that he has been self employed for approximately five years. He has been looking for other places to live but given the increased in the cost of rent it has been challenging. At the hearing the Tenant requested additional time to find alternative accommodation.
19. Given the time since the hearing, the Tenant has effectively been given the extension of time to find alternative accommodations. However, in consideration of both parties' circumstances, I find this termination date to be appropriate. The Tenant has been granted addition time to secure a rental unit and the delay is not so lengthy that would prejudice the Landlords.

DAILY COMPENSATION

20. The Tenant was required to pay the Landlord \$9,665.75 in daily compensation for use and occupation of the rental unit for the period from March 1, 2022 to December 5, 2022.

21. Based on the Monthly rent, the daily compensation is \$34.52. This amount is calculated as follows: $\$1,050.00 \times 12$, divided by 365 days.
22. There is no last month's rent deposit.
23. This Order contains all the reasons for this matter. No further reasons will issue

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 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 February 1, 2023.
4. The Tenant shall pay to the Landlords \$9,665.75, which represents compensation for the use of the unit from March 1, 2022 to December 5, 2022.
5. The Tenant shall also pay the Landlord compensation of \$34.52 per day for the use of the unit starting December 6, 2022 until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlords is \$9,665.75. Any rent payments made by the Tenant shall be offset towards this amount.
7. If the Tenant does not pay the Landlords the full amount owing on or before January 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023 at 5.00% annually on the balance outstanding.

January 10, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Natalie James

Member, Landlord and Tenant Board

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 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.