



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

Citation: Kurella v Nesbitt, 2023 ONLTB 14127

Date: 2023-01-04

File Number: LTB-L-003006-21

In the matter of: 1091 BIASON CIR
MILTON ON L9T8S7

Between: Dilip Venkata Kurella,
Radhika Vijaya Kurella

Landlords

And

Amanda Nesbitt,
Shane Nesbitt

Tenants

Dilip Venkata Kurella and Radhika Vijaya Kurella (the 'Landlords') applied for an order to terminate the tenancy and evict Amanda Nesbitt and Shane Nesbitt (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.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on June 30, 2022. The Landlords, their witness, D. Kurella ('D.K'), and the first-named Tenant 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, the Landlord's application is granted, and the tenancy will terminate.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On December 20, 2021, the Landlord gave the Tenants an N12 notice of termination with the termination date of February 28, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child for a period of at least one year.
4. The parties agree that the Landlords have compensated the Tenants an amount equal to one month's rent by February 28, 2022.

Daily Compensation

5. The Landlord did not lead any evidence at the hearing with respect to daily compensation as such, no order shall issue.
6. The Landlord collected a rent deposit of \$1,750.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$195.76 is owing to the Tenant for the period from January 1, 2015 to January 1, 2022
7. 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.

GOOD FAITH

8. 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,

(c) a child or parent of the landlord or the landlord's spouse

9. 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."
10. 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."

Landlord's Evidence

11. The Landlords called their daughter, D.K as a witness, who is the person intending to move into the rental unit. D.K testified that she lives at home with her family which consists of her two parents, brother, and her dog. She is currently attending post secondary and is planning on continuing her education after obtaining her degree from the University of Waterloo.
12. Her brother, who is still a minor is severely allergic to dogs and so her moving to the rental unit would be better for the family as she can keep her dog and have her own space. The rental unit is about 5 to 10 minutes from her parents' home and so other family members can come and visit with her and the dog.
13. During the hearing, the Tenants cross examined the Landlords quite extensively regarding the good faith intention of their daughter. It was evident through the testimony that because of the one child's allergies, the daughter's dog was a point of contention in the

family. The Landlord's also submitted that the expenses for the daughter to move into the rental unit would be less than if she was to go and rent her own space, therefore they chose the rental unit for her to move into.

Tenants' Evidence

14. The Tenants testified that on October 18, 2017, there were discussions regarding the anticipated rent increase for 2018. The Tenants submitted that the Landlords attempted to increase the rent illegally. However, the increase never happened, and the Tenants never paid it.
15. It was also clear that the Tenants felt that it was largely unfair that they would have to move and a family of 4 would be evicted because the Landlords' daughter purchased a dog.

ANALYSIS

16. As outlined above, the Courts have defined "good faith" simply to mean a sincere intention to occupy the rental unit and that generally the ulterior motives are largely irrelevant. The Board does have the jurisdiction to consider certain patterns of activity when canvassing the good faith requirement (ie. Illegal rental increases, notice being served in retaliation to a tenant asserting their legal rights). Although the Landlord did attempt to illegally increase the rent, I do not find that the notice was served in retaliation because of the Tenants denial to pay that increase. The notice was served almost 3 years after the initial discussion and so there has been a significant lapse in time.
17. The Tenants may not agree with the Landlords, with respect to the reason for the daughter's occupation of the rental unit- however, these considerations are largely irrelevant to me in my determinations. I accept the Landlords' testimony regarding their reasons for the daughter to take possession of the rental unit for her own residential occupation. It is perfectly reasonable that due to allergies of a minor in their current home that they would want the daughter (who is not a minor), and their pet to live elsewhere. It is also reasonable for the Landlord to consider personal finances as a reason to relocate their daughter into a residence that they own, that is close to them, and is cheaper, than a more expensive one. Therefore, I find that the Landlords have a good faith intention to occupy the premises.

RELIEF FROM EVICTION

18. 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.
19. The Tenants have lived in the rental unit with their 2 children since January 2, 2015. They testified that they have close ties to the community- the children go to school, attend sports leagues, and the Tenants work in the area.
20. Given the time since the hearing, the Tenants have effectively been given additional time to find alternative accommodations. However, in consideration of both parties' circumstances, I find this termination date to be appropriate. The Landlords are not in a

position where housing is in jeopardy, unlike that of the Tenants and the delay is not so lengthy that would prejudice the Landlords.

21. 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 Tenants is terminated. The Tenants 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 Landlords 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 Landlords on or after February 1, 2023.
4. The Tenants shall also pay the Landlords compensation of \$62.68 per day for the use of the unit starting July 1, 2022, until the date the Tenants move out of the unit.
5. The Landlords shall apply the last months rent deposit to the last month of the tenancy.
6. The Landlords shall also pay to the Tenants \$195.76, which represents the interest owed to the Tenants on the last months rent deposit.
7. The parties shall pay to one another any sum that is owed as a result of this order.
8. If the parties do not pay the full amount owing on or before January 31, 2023, the parties will start to owe interest. This will be simple interest calculated from February 1, 2023 at 5.00% annually on the balance outstanding.

January 4, 2023

Date Issued

Curtis Begg

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 July 16, 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.