



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

Citation: Cronin v Racho, 2023 ONLTB 14037

Date: 2023-01-04

File Number: LTB-L-021107-22

In the matter of: 44280 Line 34
Dublin Ontario N0K1E0

Between: David Cronin Landlord

And

John Racho Tenant

David Cronin (the 'Landlord') applied for an order to terminate the tenancy and evict John Racho (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.

This application was heard by videoconference on June 27, 2022. The Landlord, the Landlord's witness, Owen Cronin, the Tenant and their support person, K.Karley Frayer attended the hearing.

Determinations:

1. As explained below, the Landlord has 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 November 29, 2021, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
4. The Landlords have filed an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a minimum of 1 year.
5. It was undisputed that the Landlord has compensated the Tenant an amount equal to one month's rent by January 31, 2022.
6. There is no last month's rent deposit.

GOOD FAITH

7. 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

8. 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."
9. 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

10. The Landlord called Owen Cronin as a witness. The Landlord's witness is the son for the Landlord and the person who requires the rental unit for residential occupation. The witness testified that his current residence is too small and that he lives at home with a family of 8 people and shares a bedroom with his other brother. He is currently working two jobs which are both close to the rental unit and would like to live in the rental unit as it would give him some privacy.
11. The Landlord's evidence was not challenged on cross-examination.

Tenant's Evidence

12. The Tenant did not dispute the Landlord's intentions. Most of their evidence was with regard to relief from eviction.

ANALYSIS

13. The Landlord has established on a balance of probabilities that the Landlord's child genuinely intends to move into the rental unit and live there for at least one year. Therefore, the Landlord in good faith requires possession of the rental unit for a period of at least one year.

14. The Landlords evidence was about the intended use of the rental unit, it was not challenged, and the Landlord's witness's oral testimony was consistent and credible throughout the proceeding.

RELIEF FROM EVICTION

15. 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.
16. The Tenant testified that he is currently on a waiting list for housing. He has lived in this rental unit for approximately 12 years. Has been looking for other places to live, but given his limited income it has been challenging. At the hearing the Tenant requested 90 days to find alternative accommodation.
17. 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 Tenants have been granted addition time to secure a rental unit and the delay is not so lengthy that would prejudice the Landlords.
18. This Order contains all the reasons for this matter. No further reasons will issue

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 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 also pay the Landlord compensation of \$16.44 per day for the use of the unit starting January 5, 2023 until the date the Tenant moves out of the unit.

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 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.