



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

Citation: Majidi v Callery, 2022 ONLTB 14530

Date: 2022-12-21

File Number: LTB-L-003921-22

In the matter of: 27 MAIN ST
MISSISSAUGA ON L5M 1X5

Between: Peter Majidi Landlord

And

Edward Callery Tenant

Peter Majidi (the 'Landlord') applied for an order to terminate the tenancy and evict Edward Callery (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 August 22, 2022 at 12:01 p.m.

The Landlord Peter Majidi the Landlord's representative Amanda Richards, licensed paralegal and the Tenant Edward Callery and his representative Varthan Arulsundaram, counsel attended the hearing.

Preliminary Issue:

1. The Landlord's request sought to amend the Application to remove '1558260' as Landlord is granted. Mr. Majidi and the corporation were both named in the Application.
2. The Landlord submitted the deed of the property, property tax bill, listing Peter Majidi as sole the owner of the property. The Landlord's representative submitted that Mr. Majidi is the sole owner of his numbered company '1558260' and it was listed in error on the Application.
3. The Landlord submitted monthly rent cheques from the Tenant addressed to Peter Majidi. The Landlord's representative submitted that the cheques indicated there was no misunderstanding from the Tenant that Mr. Majidi was the Landlord. The Landlord also submitted that this amendment to the Application, clerical in nature, does not prejudice the Tenant in any way.

4. The Tenant did not dispute that the Landlord was incorrectly named in the notice of termination, but they submitted that the incorrectly named Landlord rendered the N12 notice of termination void.
5. The Tenant submitted that by failing to correctly identify the Landlord on the notice and/or application creates ambiguity; and, by allowing the Landlord to amend the Application at the hearing, this practice would invite or incent future parties to abuse the practice of filing incorrect notices of termination.
6. In this matter I find that there is no ambiguity on who the Landlord is given the interactions between the parties. This is further supported by the cheques from the Tenant to Mr. Majidi submitted as evidence.
7. Section 43 of the *Residential Tenancies Act, 2006* (the "Act"), which sets out the essential elements of a notice of termination, does not specifically require the identification of the landlord. Therefore, I find that the Landlord's failure to name itself correctly in the notice does not render it defective as the Tenant was aware of who had served them with the notice and who their landlord is.
8. The Application is therefore amended as requested.

Determinations:

9. The Tenant was in possession of the rental unit on the date the application was filed.
10. On November 17, 2021, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2022. The N12 notice indicates the Landlord requires the rental unit for their own residential use where he intends to move in with his son.
11. Pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'):
 - 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 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.
12. The N12 notice gives the Tenant over 60 days' notice.

Compensation

13. The Landlord's evidence was that compensation was provided to the Tenant on January 27, 2022, in the amount of \$1800.00, an amount equal to the lawful monthly rent. This is consistent with the documentary evidence submitted by the Landlord, a photograph of the signed and dated money order to the Tenant.

14. The Tenant did not present any evidence or testimony disputing the compensation cheque.

Good Faith

15. The main issue to be determined on this application is whether the Landlord has satisfied the “good faith” requirement in s.48(1) of the Act.

16. In *Salter v. Beljinac, 2001*, the Divisional Court held that:

“the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal...”

17. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords’ motives are “largely irrelevant”.

18. The Landlord testified he currently lives at 11 Walnut St. in Oshawa Ontario in a nicer home. He submitted his current mortgage is unaffordable and requires this residential unit as it is a more financially suitable living arrangement for him and his son. The Landlord testified that his son currently lives in Port Credit Ontario and this location is suitable for each of them to live together.

19. The Landlord summarized the value and size of his property is irrelevant and that he cannot carry his current \$9,600.00 mortgage and reiterated he needs to move into the unit for financial reasons.

20. The Landlord testified he intends to live in the unit for a period of at least one year.

21. The Tenant testified that the Landlord was not being honest and was exaggerating his financial challenges. On cross-examination the Landlord acknowledged that he currently owns four other properties, plus an additional unit under his numbered company and was a Director of a company which owned another property. Therefore, the Tenant submitted, that the Landlord could not possibly be experiencing financial hardship.

22. The Tenant further submitted that this unit was a 1000 square foot apartment, in need of maintenance and cleaning and suggested that the Landlord was not being honest insofar he and his son would be able to live comfortably in the unit for a period of at least 12 months provided the Landlord is moving from a 3100 square foot home in Oshawa.

23. I found the fact the Landlord owns other properties and generates income streams from those units does not undermine my finding that Landlord genuinely intends to move into the rental unit, nor does the that the unit is of lower quality that the Landlord’s current property. I found the Landlord’s testimony to be credible and reliable and I accept his testimony and affidavit that he genuinely intends to use the rental unit for residential occupation for a period in excess of one year.

24. Based on all of the evidence submitted by the parties I find that the Landlord proved that it is more likely than not that he in good faith requires the rental unit for the purposes of residential occupation for a period of at least one year.

Relief from Eviction – Serious Breach of Responsibilities

25. The Tenant submitted the Landlord was in serious breach of his responsibilities under section 83 of the *Residential Tenancies Act, 2006* (the 'Act') as the unit was in disrepair. The relevant provisions within s. 83(3) read as follows:

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

Tenant's Evidence

26. The Tenant testified there was water leaking from the ceiling and flooding in the basement. The flooding issue began in 2017 and the water leaking from the ceiling began in the spring of 2022, both are ongoing. The Tenant testified he informed the Landlord by phone about the flooding in 2019 and the Landlord has failed to act on the matter.

27. The Tenant also testified about a crumbling walkway which was unsafe, a hinge that is loose on the door, and some issues with the drywall on the main floor where it needs to be patched and repainted.

28. The Tenant submitted photographs to support these claims; however, the submission date of this piece of evidence was August 22, 2022, the date of the hearing. Pursuant to Rule 19.1, all parties to a matter that has been scheduled for a CMH or a hearing must provide the other parties and the LTB with a copy of all documents, pictures and other evidence that the party intends to rely upon at least 7 days before the CMH or hearing.

29. As this piece of evidence was not submitted in accordance with Rule 19.1, I find it is not to be admitted into evidence.

Landlord's Evidence

30. On cross examination the Tenant acknowledged that last time he spoke the Landlord about maintenance issues was in 2019.

31. The Landlord also submitted that the Tenant had not submitted a T6 Application through the Landlord Tenant Board regarding the maintenance issues.

Analysis

32. I do not find the maintenance issues raised by the Tenant rise the level where the Landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement. I am not convinced by the Tenant's testimony that the maintenance issues are serious enough in nature that they amounted to more than routine maintenance issues. Moreover, based on the Tenant's own testimony that he has

not raised maintenance issues with the Landlord since 2019, there is no reason to believe the Landlord knew the maintenance issues, serious or not, were ongoing.

Relief from Eviction – Tenant Circumstances

33. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Residential Tenancies Act, 2006 (the 'Act'), including the impact of COVID-19 on the parties and find that it would not be unfair to delay the eviction until March 31, 2023 pursuant to subsection 83(2) of the Act.
34. The Tenant requested that eviction be postponed for four to five months. He testified that his primary income source is the Ontario Disability Support Program which affords him limited financial capacity and few options to find a new affordable unit.
35. The Tenant further testified that he suffers from a health issues, a tumor in his head which is considered a disability.
36. The Landlord requested the eviction take place immediately as the Landlord requires the unit for his own personal use as soon as possible due to financial challenges.

Analysis

37. I find that after reviewing the evidence from both parties that it may take the Tenant additional time to search for and secure a new unit and it would not be unfair to the Landlord to delay the eviction until March 31, 2023.
38. The Tenant must pay the Landlord \$12,013.15 in daily compensation for use and occupation of the rental unit for the period from February 1, 2022 to August 22, 2022.
39. Based on the Monthly rent, the daily compensation is \$59.18. This amount is calculated as follows: \$1,800.00 x 12, divided by 365 days.

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 March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 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 April 1, 2023.
4. The Tenant shall pay to the Landlord \$12,013.15, which represents compensation for the use of the unit from February 1, 2022 to August 22, 2022, less the rent deposit and interest the Landlord owes on the rent deposit if applicable. Any payments made by the Tenant between February 1, 2022 and August 22, 2022 shall be subtracted from this amount.

5. The Tenant shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting August 23, 2022 until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$12,199.15.
7. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2023 at 5.00% annually on the balance outstanding.

December 21, 2022

Date Issued

Greg Witt

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 October 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.