



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

Citation: Persaud v Poli, 2022 ONLTB 14254

Date: 2022-12-16

File Number: LTB-L-005900-22

In the matter of: Basement, 77 HULL ST
MISSISSAUGA ON L4T 1C9

Between: Chitreka Persaud Landlord

And

Peter Poli Tenant

Chitreka Persaud (the 'Landlord') applied for an order to terminate the tenancy and evict Peter Poli (the 'Tenant') because the Landlords require possession of the rental unit for the purpose of residential occupation (L2 Application). The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date. The Landlord also applied for an order seeking arrears because the Tenant did not pay the rent that the Tenant owes (L1 Application).

This application was heard by videoconference on September 6, 2022 at 3:08 p.m.

The Landlord Chitreka Persaud, the Landlord's representative Shihka Kapoor licensed paralegal and the Tenant Peter Poli attended the hearing.

The Landlord was assisted by her daughter Andriea Ramnarine at the hearing.

Preliminary Issues:

Adjournment request

1. The Tenant requested an adjournment on the basis he had not received notice of the hearing and disclosure until August 19, 2022 therefore did not have adequate time to prepare for the hearing. The Tenant further testified he had health issues, a cardiac arrest in 2018, and a full-time job that prevented him from adequately preparing.
2. The Landlord testified in addition to serving the appropriate documents on the Tenant on time, she provided the Tenant with the hearing date information by email on August 11, 2022 and followed up leaving a voicemail on the Tenant's answering service. Moreover, the Landlord's representative submitted delaying the proceedings would be prejudicial to the Landlord as she has severe health issues requiring the unit to receive care.
3. I have reviewed the submissions from both parties, including the certificate of service dated January 13, 2022, and find the Tenant, having testified he received the notice of

hearing and disclosure August 19, 2022 had adequate time to prepare. Disclosure and Evidence are dealt with in Rule 19 of the Board's Rules of Procedure. The relevant subsections state:

19.1 - Unless the LTB has directed or ordered otherwise, 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 time.

4. While I sympathize with the Tenant's historical health issues, the Tenant did not provide specific evidence which supported his position that his past health issues impacted his ability to prepare for the hearing in the time period leading up to the hearing date. The adjournment request is denied.

Withdrawal of L1 Application

5. The Landlord requested to the withdraw their L1 application.
6. In accordance with subsection 200(4) of the Act, I consent to the Landlord's request to withdraw the L1 application.

Determinations:

7. The Landlord served the Tenant with a Notice to Terminate a Tenancy at the End of the Term for Landlord's Own Use (the 'N12 notice'), on January 13, 2022. The N12 notice gave a termination date of March 31, 2022. The N12 notice indicates the Landlord requires the rental unit for their own residential use.
8. 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.
9. The N12 notice gives the Tenant over 60 days' notice.

Good Faith

10. 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.
11. 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...”

12. 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”.
13. The Landlord testified this is a 2-unit property. She resides in one unit and the Tenant in the other, and she intends to move into the unit being occupied by the Tenant for more than one year because her family members will move into her current unit so they have additional space. Also, her family members will be able provide her with regular care if they live in the same building. The Landlord testified that she is elderly, has a hip and back pain as well as vision issues which limits her mobility and requires the unit as it is more accommodating.
14. The Tenant testified that the Landlord was not being honest; however, did not submit any specific evidence supporting this claim. The Tenant further submitted that he observes the Landlord regularly gardening and claimed the Landlord is exaggerating her health issues for the purpose of evicting him from the unit.
15. I found the Landlord’s testimony to be credible and reliable and I accept her testimony and affidavit as evidence that she genuinely intends to use the rental unit for residential occupation for a period in excess of one year. She was forthcoming, consistent, and was not argumentative or evasive on cross-examination. The Tenant’s testimony that the Landlord engages in gardening does not undermine my finding that Landlord genuinely intends to move into the rental unit.
16. Based on all of the evidence submitted by the parties I find that the Landlord proved that it is more likely than not that she in good faith requires the rental unit for the purposes of residential occupation for a period of at least one year

Compensation

17. The Landlord’s evidence was that compensation was provided to the Tenant on March 15, 2022, in the amount of \$814.00, an amount equal to the lawful monthly rent. The Landlord further testified the cheque was cashed by the Tenant on March 28, 2022. This is consistent with the documentary evidence submitted by the Landlord.
18. The Tenant testified he received the compensation cheque.

Relief from eviction

19. 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 January 3, 2023 pursuant to subsection 83(2) of the Act.
20. The Tenant requested that eviction be postponed for a year. He testified that he has been living at the rental unit for approximately 12 years. He is employed and very busy and

suffers from health issues, although no specific testimony was provided regarding the extent or depth of those issues, that these health issues limit his physical abilities.

21. The Landlord requested the eviction take place immediately as the Tenant has had more than enough time to prepare, has health issues of her own, and the Landlord requires the unit for her own personal use as soon as possible.
22. 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 January 3, 2023.

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 3, 2023.
2. The Tenant shall pay to the Landlord \$3,418.56, which represents compensation for the use of the unit from the termination date March 31, 2022 to September 6, 2022, less the rent deposit of \$700.00 and the interest owing on the deposit of \$112.00. Any payments made by the Tenant between March 31, 2022 and September 6, 2022 shall be subtracted from this amount.
3. The Tenants shall also pay to the Landlord \$26.76 per day for compensation for the use of the unit from September 6, 2022 to the date they move out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before January 3, 2023, they will start to owe interest. This will be simple interest calculated from January 4, 2023 at 4.00% annually on the balance outstanding.
5. If the unit is not vacated on or before January 3, 2023, then starting January 4, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 January 4, 2023.

December 16, 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.

