



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

Citation: Murugan v Horvath, 2022 ONLTB 14289

Date: 2022-12-13

File Number: LTB-L-019744-22

In the matter of: 20 Toulouse Court
Markham Ontario L6B1J5

Between: Jasotharan Murugan Landlord

And

Lisa Mercer Horvath
Zoltan Horvath Tenants

Jasotharan Murugan ('J.M') (the 'Landlord') applied for an order to terminate the tenancy and evict Lisa Mercer Horvath and Zoltan Horvath (the 'Tenants') because the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on June 13, 2022. The Landlord, the Landlord's legal representative, T. Sivapatham, the Landlord's witness, S. Perinpanayagam ('S.P'), and the first named Tenant attended the hearing.

Determinations:

1. As explained below, I find that the Landlord has proven on a balance of probabilities that:
 - J.M. entered into an agreement of purchase and sale of the residential complex; and
 - S.P. in good faith requires possession of the rental unit for the purpose of their own residential occupation.
2. On November 3, 2021, the Landlord gave the Tenants an N12 notice of termination with the termination date of January 31, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by the purchaser.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. The Landlord compensated the Tenants an amount equal to one month's rent prior to January 31, 2022 as required by s. 48.1 of the Act.
5. The Landlord collected a rent deposit of \$1,850.00 from the Tenants and this deposit is still being held by the Landlord.

6. 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.
7. During the hearing, the Landlord called the purchaser of the residential complex, S.P as a witness. SP testified that they purchased the property for him and his family. He intends to occupy the premises with himself, his family and his mother. He testified that his mother is currently 81 and the rental unit has its own bathroom and room on the ground floor which will be beneficial for his mother as stairs have become difficult for her to climb on a daily basis.
8. The N12 was served pursuant to Section 49(1)(a) of the Act, which states:
 - (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,
 - a) the purchaser.
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."
11. The Landlord's evidence was not overly contested by the Tenants. I found S.P to be a credible witness, and I accept their evidence that they in good faith intend to occupy the rental unit for at least one year for the purpose of residential occupation. As a result, the Landlord has met its evidentiary burden.

RELIEF FROM EVICTION

12. 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 December 23, 2022 pursuant to subsection 83(1)(b) of the Act.
13. The Tenants have lived in the rental unit for 8 years. They testified that they have built strong ties to the community, and that the rental unit is close to the school that their 3 children attend.
14. The Landlord submitted that they require the rental unit back immediately as this was the third time the purchase and sale agreement had been amended.

15. In consideration of both parties' circumstances, I find this termination date to be appropriate. Although additional time may slightly prejudice the Landlords, their housing is not in jeopardy like The Tenants. Granting a brief extension of time will provide the Tenant some additional time to secure a rental unit and the delay is not so lengthy that would severely prejudice the Landlords.
16. This order contains all of the reasons intended to be given, no further reasons shall issue.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before January 15, 2023.
2. The Landlord shall apply the last month's rent deposit to the last month of the tenancy.
3. If the unit is not vacated on or before January 15, 2023, then starting January 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 16, 2023.
5. The Tenants shall also pay the Landlord compensation of \$60.82 per day for the use of the unit starting January 16, 2023 until the date the Tenant moves out of the unit.

December 13, 2022
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 Tenants expires on June 25, 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.