



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

Citation: Bhalla v Gillam, 2022 ONLTB 11770

Date: 2022-12-12

File Number: LTB-L-015881-22

In the matter of: 2, 274 KENILWORTH AVE N
Hamilton ON L8H4S9

Between: Subash Bhalla Landlord

And

Amanda Gillam Tenant

Subash Bhalla (the 'Landlord') applied for an order to terminate the tenancy and evict Amanda Gillam (the 'Tenant') 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.

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 October 19, 2022.

The Landlord, the Landlord's Representative Edwin Alexander, the Purchaser Mohammad Aslam and a friend of the Tenant, Paul Titus, attended the hearing. The Tenant did not attend the hearing.

Determinations:

Adjournment Request

1. The Tenant sent her friend Paul Titus ('P.T') to seek an adjournment on her behalf. P.T submitted that the Tenant could not attend the hearing because she is currently working night shifts and did not have enough time to get a legal representative. P.T also mentioned that the Tenant has been struggling with illness recently that has affected her ability to prepare for the hearing.
2. The Landlord was opposed to the adjournment request.
3. Section 183 of the *Residential Tenancies Act* ('the Act') directs the Landlord and Tenant Board (the 'Board') to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and to be heard on the matter.

4. The adjournment request was denied because the Tenant had sufficient time to prepare for the hearing and to hire a legal representative. The Tenant was deemed served with the N12 Notice of Termination ('N12') on March 19, 2022. The Notice of Hearing was mailed out to the Tenant as of September 29, 2022. Additionally, it was not clear to me why the Tenant working an overnight shift during the evening would prohibit her from attending a hearing during the day. Finally, there was no medical documentation provided or explanation of how the tenant being ill had affected her ability to either prepare for the hearing or hire a legal representative. As such, the adjournment request was denied.

P.T's Participation in the Hearing

5. I asked P.T if he was seeking to represent the Tenant at the hearing. Despite asking the question twice, P.T did not provide me with a clear answer. His response was that a lawyer was needed. As P.T did not request to represent the Tenant, the hearing proceeded with only the Landlord's evidence. However, I exercised my broad power under section 201 of the *Residential Tenancies Act* ('the Act') and permitted P.T to provide testimony exclusively about the Tenant's circumstances relevant to section 83 of the Act.
6. Section 83 provides a statutory imperative for the Board to consider "all circumstances" in deciding to deny or delay an eviction. To refuse to hear the circumstances relevant to section 83 would be directly contrary to my statutory obligation.
7. Despite ruling that P.T was only permitted to provide evidence under section 83 of the Act, he interjected at one point during the hearing and indicated that compensation for the notice of termination had not been paid to the Tenant and that the Landlord is still accepting rent from the Tenant. As P.T had not sought to represent the Tenant, and even if he had, a representative would not be able to provide evidence, I did not consider those two comments in my order. However, if I had considered those two comments in my order they would not have affected my ultimate decision as a bold declaration that compensation has not been paid, by someone who is not the Tenant would have carried little weight, and the fact that the current Landlord is still accepting rent is to be expected as the tenancy has not yet been ended.

The Application

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of January 31, 2023.
9. The Tenant was in possession of the rental unit on the date the application was filed.
10. On March 19, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on March 24, 2022 with the termination date of May 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.
11. The Landlord testified at the hearing that he has entered into a purchase and sale agreement with the purchaser on December 1, 2021. The original closing date was to be April 28, 2022 but it was mutually pushed back by the parties. When I went to write this order I realized that the Landlord had not indicated whether there was a new closing date

for the sale. I issued interim order (LTB-L-015881-22-IN) and ordered that on or before November 28, 2022 the Landlord was to file the current purchase and sale agreement of the rental property.

12. In response to that order the Landlord provided the purchase and sale agreement as well an amendment to that agreement. The amendment lists the completion date as January 15, 2023 and states "in the event that the seller is unable to provide vacant possession of the main floor unit on closing then it is agreed that the closing date will be extended to April 18, 2023; however in the event the seller is able to provide vacant possession of the main floor unit before April 18, 2023 then the closing date may be moved up to a date that is mutually agreeable to both parties.
13. I am reasonably certain that a completed sale will result from the agreement.
14. The purchaser of the rental property Mohammed Aslam testified that he in good faith intends to occupy the rental unit for at least one year. The property consists of three units, but the main floor unit is the unit that the purchaser intends to occupy. The purchaser testified that the reason he wants to move into the rental property is because it will be easier for his work and the property will be easy to maintain because he will not need to do things like cut the grass. I found the purchaser's testimony to be credible and accept on a balance of probabilities that he intends to occupy the rental unit for the purpose of residential occupation for at least one year.
15. The Landlord testified that he waived April 2022 rent to satisfy the compensation requirement under the Act and that this was explicitly communicated to the Tenant. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022.
16. The Landlord has proven that the residential complex contains three or fewer units, the Landlord has entered into an agreement of purchase and sale of the residential complex, and the purchaser in good faith requires possession of the rental unit for the purpose of their residential occupation.

Daily Compensation

17. The Landlord's Representative stated that because the Tenant was not in any arrears that the Landlord would abandon the claim for daily compensation from the Tenant.

Relief from Eviction

18. P.T requested relief from eviction in the form of a postponed eviction. P.T informed me that the Tenant lives in the rental unit with her 20-year-old daughter and that they need time to find a new place to live. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.

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.

December 12, 2022

Date Issued

Amanda Kovats

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 June 13, 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.