



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

Citation: Mehta v Desmond, 2022 ONLTB 9015

Date: 2022-11-25

File Number: LTB-L-015150-22

In the matter of: UPPER LEVEL, 20 IVY LEA CRT
BRAMPTON ON L6Y4K6

Between: Manoj Mehta Landlord

And

Debbie Carolyn Desmond, Kevin Louise Desmond Tenants

Manoj Mehta (the 'Landlord') applied for an order to terminate the tenancy and evict Debbie Carolyn Desmond and Kevin Louise Desmond (the 'Tenants') 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 Tenants remained in the unit after the termination date. However, the claim for compensation was withdrawn at the hearing because the Tenants are not in arrears.

This application was heard by videoconference on October 5, 2022.

The Landlord, the Landlord's representative Shikha Kapoor and the Tenant Debbie Carolyn Desmond attended the hearing. The Tenant Kevin Louise Desmond did not attend the hearing.

Determinations:

1. 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.

Compensation

1. The Landlord provided the Tenant with a certified bank draft in the amount of \$2,100.00 dated for October 20, 2020. This compensation was provided for a previous personal use eviction application that did not continue. The Bank draft was never returned.
2. The Landlord submits that this compensation is sufficient to satisfy the compensation requirements of the Act because the money was never returned to the Landlord and because the amount of compensation given still equals one month's rent. There have been no rent changes since the compensation was given.

3. The Tenant Debbie Carolyn Desmond ('D.C.D') submits that she never cashed the bank draft, and it is likely stale dated by now. The Landlord submits that they had no way of knowing that the Tenants never cashed the bank draft because the money is already gone from their account.
4. Section 48.1 of the *Residential Tenancies Act* ('the Act') states in part that a landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy for the personal use of the Landlord, their spouse, their child, or someone who will provide care services to those individuals.
5. Section 55.1 of the Act says, "If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50".
6. Section 55.1 of the Act is extremely clear about the deadline that compensation must be paid by. It must be paid no later than the termination date in the notice of termination. However, section 55.1 is silent on when compensation can be paid before that deadline. What does seem to be clear from the section is that there needs to be some connection between the compensation and the notice of termination given. A landlord cannot claim that a sum of money previously given to a tenant for an unrelated reason counts as compensation because it matches the required amount.
7. In order to determine if section 55.1 of the Act can be satisfied by compensation previously given to a tenant, I need to take a purposeful approach to the Act. The purpose of section 55.1 is to ensure that a tenant is compensated for the inconvenience and expense of moving prior to the date of termination in their eviction notice. It also serves to ensure that Landlords follow through with compensating tenants before they have to vacate a rental property.
8. What can also clearly be read into the compensation requirements of the Act is that tenants need to understand why they are receiving money from their landlord so that they can best determine what to do with the money.
9. The Act has a tenant protection focus and that focus is satisfied here if the tenant has been compensated. The fact that a tenant receives compensation earlier rather than later does not prejudice the tenant in any way as long as they understand why they have been given the money. In this case the Landlord has served 5 previous N12 Notices of Termination. It is clear that the Landlord has had a continued desire to evict the tenant for personal use. It would be reasonable for the tenants to assume that when the landlord did not ask for the compensation back that they would try again.
10. For those reasons I find that the Landlord's payment on October 20, 2020 satisfied the compensation requirements under the Act. However, if the previous compensation bank draft is no longer cashable, or cannot be located by the Tenants, the Landlords shall pay replacement compensation to the Tenants in the amount of \$2,100.00. I recognize that this may result in the Landlord having to pay double compensation as the bank draft money has already been removed from his account, but my primary concern is that the Tenants are compensated. The Landlord's Representative also submitted at the hearing that the Landlord would be willing to give the Tenants compensation again.

The Application

11. The Tenants were in possession of the rental unit on the date the application was filed.
12. On March 14, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and his wife.

The Evidence

13. The Landlord testified that he currently lives next door to the rental unit. He is intending to give his current house to his daughter who just finished her medical residency program in America. The Landlord testified that his daughter needs her own property because she is married and looking to start her own life. The Landlord testified that he is getting old and has ongoing health issues and that his daughter is going to be helping him with his care and that's why she wants to live close to him. The Landlord testified that the rental property will be his primary residence for him and his wife for at least one year and that they intend to live there for the rest of their lives.
14. The Landlord also testified that there are students living in the basement of the rental property, but he intends to ask them to leave so that he and wife can take over the entire property.
15. The Landlord also testified that he does run a business out of the basement of his current home, but he will be close by and will still be able to access it.
16. The Landlord testified that he has tried on four occasions to evict the tenant for his or his family member's own use. One of those times did not result in an application to the board. I've reviewed the Board's records and determined what happened to the other applications. File CEL-02842-21 was dismissed after a hearing because the Landlord did not file an affidavit to support the application. File CEL-00662-21 was withdrawn. CEL 96231-20 was also withdrawn. The Landlord testified that the reason the applications were withdrawn was because of issues with the applications. In one application the wrong person filled out the required declaration, in another a date was written incorrectly on the N12 Notice of Termination.
17. Not mentioned by the Landlord is also file CEL-92619-20 which was withdrawn.
18. Under cross examination the Landlord denied that a conversation occurred between him and the Tenant D.C.D where he asked her to pay \$1000.00 more a month and that he suggested she have more people move into the rental unit to cover the cost. However, the Landlord did admit to at one time having a conversation with the Tenant D.C.D regarding increasing the rent by 7%.
19. The Landlord's daughter Shalima Mehta ('S.M') testified that she and her husband are planning on moving into her father's current property. S.M testified that she is now finished her medical studies in America and has since moved home. S.M testified that she has hundreds of thousands of dollars of debt and cannot afford to rent a property. She also testified that she wants to be close to her family and also wants to be able to help her father with his medical care.

20. Under cross examination S.M testified that she was aware that her father previously indicated to the Tenants that her brother was intending to move into the rental property but because he was unable to move in within a time period that worked for him, he has since purchased a property of his own.
21. The Tenant's daughter Alexis Zahur testified that she was present when there was a conversation between the Landlord and her mother about the Landlord asking for a rent increase or moving more people in.
22. The Tenant Debbie Desmond ('D.D') testified that the Landlord started serving N12 Notices of Termination on her after she declined to pay a rent increase. She also testified that the N12 Notices started around the time she complained about maintenance issues. D.D suggested that the Landlord wants to turn the rental unit into a rooming house to rent it out for more money.

The Landlord Requires the Rental Property in Good Faith

23. I find that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year. This is because I found both his testimony and his daughter's testimony to be credible that the daughter intends to take over the Landlord's current home, and that the Landlord intends to move into the rental property.
24. I do not think that because the Landlord has tried to evict the tenant for personal use in the past it means that the landlord has bad faith. All the landlords' previous applications have either been dismissed or withdrawn because they did not meet procedural requirements of the Act. This indicates that the Landlord is not familiar with the Act but does not mean that he has bad faith.
25. I also do not think that the Landlord previously claiming that he required the rental unit for his son, then daughter, then himself necessarily means he has bad faith. The Landlord testified that he has had the intention for his family to use the rental property for some time. The numerous eviction attempts have happened over the course of years, and it is to be expected that a family's situation may change.
26. I am unable to determine whether the Landlord and the Tenants ever had a conversation about the Tenants paying \$1000.00 more in rent or having more people move into the rental property, as the Landlord testified it did not happen and the Tenant D.C.D and her daughter testified that it did. Regardless of whether this conversation occurred or not it would not change my finding that the landlord in good faith intends to move into the rental property. A landlord indicating that they want to increase the rent, an illegal amount especially, could be some evidence that they have bad faith when they later indicate that they want to move into the rental property for personal use. However, absent some more evidence of bad faith, asking to increase the rent alone is not enough to satisfy me that the Landlord has bad faith. It is very possible that the Landlord did at one time want to increase the rent and that now he does genuinely want to move into the rental property.
27. As I have found the Landlord and his daughter's testimony to be credible, and I am not convinced by any of the Tenants arguments, I find that the Landlord has made out the basis of this application.

Relief from Eviction

28. The Tenant D.C.D requested that the eviction be postponed for 8 months to a year for the Tenants to find a new place to live. D.C.D testified that her elderly mother and two children both live with her in the rental unit. D.C.D testified that she has lived in the area for years and that both her children go to school in the area. The Landlord is opposed to any postponement of the eviction.
29. 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. This will give the Tenants some time to find a new place to live, but also recognizes that the Landlord has been waiting some time to move into the home.

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 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. If the previous compensation bank draft is no longer cashable, or cannot be located by the Tenants, the Landlords shall pay replacement compensation to the Tenants in the amount of \$2,100.00.

November 25, 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 July 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.