



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

Citation: WANG v PIFARO, 2022 ONLTB 11488

Date: 2022-11-22

File Number: LTB-L-020074-22

In the matter of: FIRST FLOOR
88 LAUGHTON AVENUE
TORONTO ONTARIO
M6N2W9

Between: LI WANG Landlord

And

ANDRE PIFARO Tenants
IDALINA PIFARO

LI WANG (the 'Landlord') applied for an order to terminate the tenancy and evict ANDRE PIFARO and IDALINA PIFARO (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.

This application was heard by videoconference on November 3, 2022. The Landlord, the Landlord's representative, Amanda Richards, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated and the Tenants must move out of the rental unit on or before April 30, 2023.

N12 Notice of Termination – Landlord's Own Use

2. On November 24, 2021, the Landlord gave the Tenant an N12 notice of termination deemed served on November 29, 2021, with the termination date of January 31, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation by her daughter Jessica Yang. The Landlord applied to the Board to terminate this tenancy on November 29, 2021. I find that the Landlord's application complied with s. 69(1) of the *Residential Tenancies Act, 2006* (the 'Act').

Compensation

3. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of

residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.

4. The Landlord testified that she paid the Tenants one month's rent compensation of \$1505.00 through an e-transfer on January 24, 2022 – seven days before the N12 date of termination. The Tenants testified that they received the e-transfer of \$1505.00 from the Landlord.
5. On the basis of the evidence provided, I am satisfied that the Landlord met her obligation to pay the Tenants compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act, by providing an e-transfer payment to the Tenants of \$1505.00 on January 24, 2022 – before the date of termination of January 31, 2022.

Good Faith

6. The N12 was served pursuant to s. 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 the Landlord required, in good faith, the unit for residential use.
7. 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 the Landlord sincerely 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.
8. 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.

Landlord's Evidence

9. The Landlord testified that in good faith she served a previous N12 to the Tenants on July 30, 2021; however, she mistakenly did not pay the Tenants the one month's rent compensation before the termination date of the N12. The Landlord stated that on the advice her legal representative, she withdrew her L2 application TSL-23403-21 during a hearing on November 9, 2021, and restarted the process to ensure she complied with statutory requirements.
10. The Landlord testified that her daughter, Jessica Yang, currently lives with her father; however, her daughter has a boyfriend, and her daughter would like to live in the rental unit with her boyfriend to eventually start a family. The Landlord testified further that both her daughter and her daughter's boyfriend work from home and would like the main floor unit of the residential complex, rather than the second level unit, because the main floor unit better accommodates two people working at home.

11. The Landlord stated that her daughter's boyfriend will also assist with maintenance chores around the residential complex, to assist her husband. The Landlord testified that she never listed the two-storey semi-detached residential complex for sale.
12. Jessica Yang testified that she is in a serious relationship with her boyfriend, and she wants to live together with her boyfriend, but is currently unable to do that living with her father in a condominium apartment. Ms. Yang testified further that she wants to reside in the main floor unit of the residential complex because the second upstairs unit is not large enough for her to work at home, as well as for her boyfriend to work at home. Ms. Yang explained that her boyfriend teaches English, virtually, from home, and they need two bedrooms to accommodate their work requirements. Ms. Yang stated further that her boyfriend will assist her mother's husband with maintenance tasks around the residential complex, and as a result, her mother will not charge her rent for the unit.
13. Pursuant to s. 72(1)(a) of the Act, Jessica Yang provided a signed declaration, dated November 22, 2021 declaring her good faith intention to reside in the rental unit for her own personal use for a period of at least one year. Ms. Yang testified at the hearing that she intends in good faith to move into the rental unit for her own personal use, and to reside there for at least one year.

Tenants' Evidence

14. The Tenants testified that they believe the Landlord's application to evict them is not made in good faith because the Landlord often spoke to them that she wanted to sell the residential complex, and now suddenly the daughter requires the rental unit. The Tenants questioned the daughter's requirement for their specific unit, commenting that the daughter and her boyfriend could live in a smaller unit.

Analysis

15. On the basis of the evidence provided, I am satisfied that the Landlord's daughter genuinely intends to use the rental unit for her own personal residence for at least one year. I am not satisfied that the Landlord's previous N12, or contemplated plans to sell the residential complex, demonstrate bad faith from the Landlord with respect to the Landlord's current application. The reasonableness of the daughter's requirement for the main floor unit is not a determinant of the Landlord's good faith, as articulated in *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), and as provided paragraph 7 above.
16. I therefore find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.

Daily Compensation & Rent Deposit

17. The Landlord's representative submitted that this is a month-to-month tenancy with a monthly rent of \$1505.00 paid on the first day of each month, and that the Tenants remain in possession of the rental unit.
18. The Landlord testified that the Tenants have no rent arrears as of the date of this hearing.

19. Based on the monthly rent, the daily compensation is \$49.48. This amount is calculated as follows: \$1,505.00 x 12, divided by 365 days.
20. The Landlord collected a rent deposit of \$1,505.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$16.78 is owing to the Tenants for the period from November 30, 2021 to November 3, 2022.
21. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

22. 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 April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Tenants testified that although they diligently pay their monthly rent, their financial situation is very difficult, given one Tenant's work as a server in the hospitality industry, and the other Tenant's work a few times per year as an actor. The Tenants explained that given their restricted financial resources, it is very difficult to find alternate rental units in their price range; although, they keep looking.
24. Tenant Idalina Pifaro testified further that she is on a waiting list for preventative thyroid cancer surgery to remove a nodule that is growing, and this health issue, in addition to a possible eviction, has caused her stress. The Tenant also noted that her 10-year-old daughter goes to school in the neighbourhood, and any eviction would be disruptive to her daughter if she has to attend another school. The Tenants remarked that they need additional time before being evicted, ideally to October 1, 2023, to deal with their personal circumstances.
25. I find that, although the Landlord in good faith requires possession of her rental unit for the residential occupation of her daughter, postponing the Tenant's eviction until April 30, 2023 will provide the Tenants, who are struggling with health and financial issues, with more time and less stress to secure a rental unit that is suitable for them and their daughter's schooling. I find that delaying the Tenants' eviction beyond April 30, 2023 would be unfair to the Landlord.
26. I am satisfied that the eviction postponement to April 30, 2023 would not be financially unfair to the Landlord, given that the Tenants continue to pay their rent, with no arrears, and the Landlord's daughter would not be paying rent. Although the Landlord's daughter's current residence is not ideal, I am satisfied that the daughter's move to the rental unit is not, as of the day of this hearing, immediately time critical. I therefore find that the daughter's delayed move to the rental unit would not be unfair to the Landlord.

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 April 30, 2023.

2. As of the date of this order, the amount the Landlord is holding for rent paid from November 4, 2022 to November 30, 2022, the rent deposit, and the interest owing on the deposit exceeds the amount the Tenant owes for compensation by \$2,878.34. This amount owing represents \$1356.56 in rent, \$1505.00 for the rent deposit, and \$16.78 for the rent deposit interest.
3. The Landlord is authorized to offset from the amount of \$2,878.34 the Landlord owes the Tenants, the following amount: \$49.48 per day for compensation for the use of the unit from November 4, 2022 to the date the Tenants move out of the unit.
4. The Landlord or the Tenants may collect from the other any money that becomes owing as a result of this order.
5. If the Tenants or the Landlord do not pay the other the full amount owing on or before April 30, 2023, the Tenants or the Landlord will start to owe interest. This will be simple interest calculated from May 1, 2023 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before April 30, 2023, then starting May 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 May 1, 2023.

November 22, 2022
Date Issued

Frank Ebner
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 November 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.