



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

Citation: Lam v Bass, 2022 ONLTB 11804

Date: 2022-11-15

File Number: LTB-L-015883-22

In the matter of: 809, 126 SIMCOE
TORONTO ON M5H4E6

Between: Pik Ching Marisa Lam Landlord

And

Tanya a.k.a. Tatjana Bass Tenant

Pik Ching Marisa Lam (the 'Landlord') applied for an order to terminate the tenancy and evict Tanya a.k.a. Tatjana Bass (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on October 19, 2022.

The Landlord, the Landlord's Representative Lisa Barder and the Tenant attended the hearing.

Determinations:

1. 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 February 1, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 18, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on February 23, 2022 with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2022.

The Landlord's Testimony

5. The Landlord testified that she wants to occupy the rental unit because it is bigger than her current condo. The Landlord currently lives in a studio where her bed is in the living room. In contrast, the rental unit is a one-bedroom unit. The Landlord wants the larger space because she is retiring within the next two years and wants the ability to have a pullout couch for guests in her living room.
6. The Landlord testified that she intends to sell her current condo when she moves into the rental unit.

7. The Landlord also testified that while her current condo is also in Toronto, the rental unit is closer to the entertainment district where she likes to see shows.
8. The Landlord testified that she currently owns two properties, the one she currently resides in and the rental property. The Landlord also manages her sister's rental property.
9. The Landlord testified that she is intending on residing at the rental unit for at least one year, but likely indefinitely.
10. The Landlord testified that she intends to complete some renovations on the rental unit before moving in. The Landlord wants to remove the carpet in the unit, add in a kitchen island, and turn the tub into a stand-up shower. The Landlord introduced into evidence an email she sent to a renovation company asking for a quote. The company replied and a time for the company to do measurements of the unit was arranged.
11. The Landlord testified that she has a good relationship with Tenant except there was an incident in 2020 in which the Tenant was operating the rental unit as an Airbnb and the Landlord asked the Tenant to leave as a result.

Analysis and the Tenant's Arguments that the Landlord has Bad Faith

12. Section 48 of the Act says that 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 for a period of at least one year.
13. When deciding "good faith" I must consider whether the landlord has a genuine intention to occupy the premises. Whether the landlord's plan is reasonable is not the test: *Feeney v. Noble, 1994 CanLII 10538 (ON SC)*.
14. I found the Landlord's testimony to be credible despite two alleged inconsistencies that the Tenant brought to light in her cross-examination. The first inconsistency was that the Landlord at one time suggested to the Tenant that she planned to move into the rental unit and then renovate, but at the hearing the Landlord indicated that she wished to renovate the rental unit before moving in.
15. The landlord indicated that she has always intended to renovate, but that she may have at one time indicated she would move in first. I do not find that this inconsistency in the Landlord's testimony amounts to her lacking credibility. The renovations desired by the Landlord are not major and the Landlord testified that she could live in the rental unit while it is being renovated.
16. The second alleged inconsistency in the Landlord's testimony was that she testified that part of the reason she wants to move into the rental unit is because she wants to be closer to the entertainment district to see shows. The Tenant asked the Landlord to name a show she has seen recently. After a substantial pause the Landlord indicated that she had tickets to Hamilton but that it was canceled because of the pandemic. The Landlord also testified that she has not seen any shows recently because of the pandemic and the shutdown of many theatres. I accept the Landlord's explanation as to why she has not seen many shows recently.
17. The Tenant testified that she is currently paying approximately \$1000.00 under market rent for the rental unit. The Tenant introduced into evidence rental listings for comparable units.

The Tenant also testified that the average sale condo price in the neighbourhood is peaking. The Tenant testified that she received multiple expert opinions from realtors that lead her to believe that the Landlord does not wish to move into the rental unit and instead wishes to rent the apartment at a higher rent or sell the apartment once it is vacant. The Tenant also introduced graphs that indicated that the Landlord's attempt to evict the Tenant lines up with increases in the housing market temperature.

18. The fact alone that rents and condo sale prices are increasing in a housing market is not sufficient to establish that a landlord has bad faith. In large cities housing prices are often going up. Absent, some concrete evidence about a landlord's intention to re-rent or sell a rental unit once vacant, the conditions of the housing market alone are not sufficient to prove that a landlord has bad faith.
19. The Tenant also argued that her relationship with the Landlord has not been good since they had a dispute about the Tenant listing the rental unit on Airbnb in 2020. At that time the Tenant indicates that the Landlord asked her to leave. I am not satisfied that because the Landlord asked the Tenant to leave two years ago, for an unrelated reason, it means that the Landlord has bad faith.
20. The Tenant also indicated that she does not believe that the Landlord intends to occupy the rental unit because the Landlord is elderly and has previously indicated that she prefers a quieter environment, whereas the entertainment district is noisy and mostly young people live there. I am not persuaded by this argument. The Landlord's current condo is also downtown so the landlord is used to downtown living. Additionally, the Landlord indicated that she specifically wants to live in the entertainment district because of what is available in the area. The Landlord also said that she used to live in Hong Kong and is used to noisy cities.
21. The Tenant also argued that the landlord should have served an N13 Notice of Termination for renovations and not the N12 Notice that she did serve. The N13 Notice of Termination is for renovations so extensive that the unit must be vacant to do the work. I am satisfied that the renovations required by the landlord are fairly minor and that occupation during them could occur. Additionally, the Landlord did serve the correct notice because she wants to occupy the unit, not just renovate it.
22. 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 the testimony of the Landlord to be credible in that regard and because I was not persuaded by any of the Tenant's arguments.

Relief from eviction

23. 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 February 1, 2023 pursuant to subsection 83(1)(b) of the Act.
24. The Tenant has lived in the rental unit for 15 years and she worries that it will be difficult to find a new place to live. The Tenant requested that I delay the eviction until February 1, 2023.

25. The Landlord indicated that they are willing to be flexible as to the termination date and have no issues with the eviction being postponed by a few months.
26. As the parties had no disagreement about the eviction being postponed, I will postpone the eviction to February 1, 2023 which is the date that the Tenant requested.

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 February 1, 2023.
2. If the unit is not vacated on or before February 1, 2023, then starting February 2, 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 2, 2023.

November 15, 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 August 2, 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.