



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

Citation: Twiss v 707076513, 2022 ONLTB 11409

Date: 2022-11-09

File Number: LTB-L-019307-22

In the matter of: Blue House, 8857 County Road 12
Lisle ON L0M1M0

Between: Melanie Twiss Landlord

And

Lisa Hedley Tenant

Melanie Twiss (the 'Landlord') applied for an order to terminate the tenancy and evict Lisa Hedley (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 August 25, 2022.

The Landlord and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

Also in attendance was Al LaFrance, an occupant of the rental unit.

Determinations:

ADJOURNMENT REQUEST

1. At the hearing, the Tenant sought an adjournment on the basis that she was not aware of the request to shorten time for hearing or that it had been granted; further she had not been given enough time to put her evidence together. She also submits that the Landlord listed her email and phone number on the L2 application under the Tenant's contact information and because of this, the Tenant did not receive the PIN to log onto the Tribunals Ontario Portal.
2. The Landlord opposed the Tenant's request to adjourn as the Landlord had mailed a copy of the N12, L2, certificate of service, compensation cheque, and other home listings to the Tenant on May 27, 2022 – from which the Tenant was able to cash in the compensation cheque. The Landlord accepts her mistake of incorrectly listing her contact information under the Tenant's contact information section. The Landlord submits there would be great prejudice to her if the matter were adjourned as her child is due to be born on Friday. Furthermore, the Landlord submits the Tenant could have made inquiries to the Board between May and August 2022 about accessing the portal after receiving the file number

from the Landlord in the package she mailed. A copy of the documents mailed to the Tenant were submitted into evidence.

3. The Tenant confirmed receiving the compensation cheque on May 27, 2022 and believes the Landlord's application was filed in bad faith. No further submissions were made by the Tenant in respect of her adjournment request.

ANALYSIS

4. The Board's records show that while the application contains an incorrect email address for the Tenant, the PIN letter, along with the notice of hearing, notice of termination, application, declaration, etc. were mailed to the Tenant at the rental unit on August 4, 2022. This is the same day the Landlord was served with the email from the Board containing information about the notice of hearing.
5. The Board's records also show the Tenant accessed the Tribunals Ontario Portal as early as August 10, 2022 – 15 days prior to the hearing date and before the Landlord's upload of their evidence on August 16, 2022.
6. It is unclear in the Tenant's request for an adjournment what material she required to gather that could not have been gathered since August 10, 2022 when she accessed the portal or since May 27, 2022 when she received a copy of the application that the Landlord had filed with the Board.
7. Given the vague request and the prejudice faced by the Landlord, the Tenant's request to adjourn was denied. I proceeded to hear the Landlord's L2 application.

L2 APPLICATION

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, an order shall issue granting the Landlord's application and terminating the tenancy on November 20, 2022.
9. By way of background, this tenancy began on December 1, 2015. This is a month-to-month tenancy in which rent is due on the first of the month in the amount of \$1,260.00.
10. The Tenant was in possession of the rental unit on the date the application was filed and continued to remain in possession of the rental unit as of the hearing date.
11. The Landlord's L2 application is based on a N12 notice of termination.

N12 Notice of Termination

12. On March 30, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022 pursuant to subsection 48(1) of the *Residential Tenancies Act, 2006*. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
13. At the hearing, the Landlord testified that the residential complex is a farm owned by the Landlord which has two houses, a white house and a blue house. The Landlord lives in the white house and the Tenant lives in the blue house.

14. The Landlord describes the white house as being older than the two (100 years old) and smaller of the two houses; it consists of two bedrooms; the Landlord testified that it lacks a toilet and requires better a septic system. She further testified that the upper storage area has no heat.
15. The Landlord describes the rental unit as a 32-year-old, three bedroom home with 1.5 bathrooms. It has upgraded outlets and plumbing systems including a water pump. The Landlord testified that the blue home has been their family home for many generations before it was rented out to the Tenant.
16. However, the Landlord testified that as their family is growing and she is due to deliver her baby the week after the hearing, she requires more space than her current home can provide as well as a better toilet facilities. She testified that because the farm is part of their livelihood, selling the property is not an option nor is renovating their current residence.
17. The Landlord testified that compensation was provided to the Tenant in the form of a cheque which was cashed in by the Tenant.
18. The Landlord seeks a termination of the tenancy as soon as possible.

Tenant's Request for Relief

19. The Tenant believes the Landlord's application has been brought in bad faith as they have previously rented out the white house between 2016 and 2020. After that, the Landlords occupied the house for the past two years after installing a furnace, insulating the basement and installing a new septic system.
20. The Tenant submits that she is not fighting the eviction but wants to move out by October 31, 2022 as she is waiting for a place to line up that falls within her budget since she currently pays \$1,260.00 in rent whereas the market rate is \$2,800.00.
21. In other words, the Tenant seeks a delay in eviction. The Tenant testified that she lives in the rental unit with her occupant and has pets that make it hard to find accommodations that are pet friendly. In the alternative, the Tenant would face homelessness.
22. The Landlord opposes the request to extend the termination date as the Landlord is set to deliver her baby the following week and requires the rental unit as soon as possible to ensure it is ready for their family.

ANALYSIS

23. On an application like this one the first question for the Board is whether or not the evidence establishes it is more likely than not that the Landlords genuinely intend to move into the rental unit and live there for a period of at least one year.
24. *In Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No 2049, 19 O.R. (3d) 762 (Ont.Div.Ct.) 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 by the Courts in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792, 201 D.L.R. (4th) 744 (Ont.Div.Ct.). In *Salter v. Beljinac*, 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."

25. 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."
26. Based on the evidence before the Board, I find that the Landlord served the notice in good faith as she genuinely intends to live in the rental unit for at least one year. Her rationale for moving into this rental unit is logical; it is a larger unit that can accommodate the Landlord's growing family. Any reasonable person would do the same.
27. Although the Tenant alleges the Landlord's motive in serving the N12 Notice lacks good faith, she was unable to lead sufficient evidence to support these assertions or demonstrate the connection of having rented the white house five years before moving in to an act of bad faith.
28. However, if I am wrong in this regard, the Tenant will have the remedy of filing a T5 application should they discover the Landlord has not moved into the rental unit within a reasonable amount of time after they vacate.
29. I also find the Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022. This is confirmed by the evidence of both parties.
30. The Landlord collected a rent deposit of \$1,260.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$236.75 is owing to the Tenant for the period from December 1, 2015 to August 25, 2022.
31. 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.

Relief from eviction

32. While the Tenant seeks a delay in eviction to October 31, 2022, and the Landlord opposes the delay, as the time requested by the Tenant has passed, a standard order shall issue.
33. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
34. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 November 20, 2022.
2. If the unit is not vacated on or before November 20, 2022, then starting November 21, 2022, 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 November 21, 2022.
4. The Tenant shall pay to the Landlord \$2,058.75 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board), which represents compensation for the use of the unit from June 1, 2022 to August 25, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenant shall also pay the Landlord compensation of \$41.42 per day for the use of the unit starting August 26, 2022 until the date the Tenant moves out of the unit.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 20, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 21, 2022 at 4.00% annually on the balance outstanding.

November 9, 2022
Date Issued

Sonia Anwar-Ali
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 May 21, 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.