



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

Citation: Donnelly v Di Carlo, 2022 ONLTB 8575

Date: 2022-11-03

File Number: LTB-L-014728-22

In the matter of: Upper 1, 385 ANTWERP AVE
SUDBURY ON P3C4M8

Between: Thomas Donnelly Landlord

And

Anna Di Carlo Tenant

Thomas Donnelly (the 'Landlord') applied for an order to terminate the tenancy and evict Anna Di Carlo (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.

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 5, 2022.

Only the Landlord and their representative Teresa Hunt attended the hearing.

The Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 as of November 14, 2022. In addition, the Tenant shall pay daily compensation for each day the Tenant remained in the unit after the termination date.

The Landlord Requires the Rental Unit in Good Faith

2. The Tenant is still in possession of the rental unit.
3. On February 20, 2022, the Landlord gave the Tenant an N12 Notice of Termination, which was deemed served on February 25, 2022, with a 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 themselves.

4. The Landlord testified that he currently lives on the main floor of 385 Antwerp Ave, while the Tenant live upstairs. The Landlord testified that he wants to take over the whole house for himself and that he has no intention of renting out the rental unit again. The Landlord testified that there is a door currently separating the two units, but he intends to remove that door. The Landlord also testified that he will be using the upstairs of the house for his bedroom as well as business. The Landlord testified that part of the reason he wants to reclaim the upstairs of his house is because he is becoming too old to be a landlord, however that is not his only motivation and he does also want to expand his living quarters to the upstairs.
5. The Landlord also filed an affidavit that says he in good faith requires the rental unit for his own residential use for a period of at least one year.
6. 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. I made this finding because I found the uncontradicted testimony of the Landlord to be credible in this regard.
7. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2022.

Daily Compensation

8. Based on the Monthly rent, the daily compensation is \$27.95. This amount is calculated as follows: $\$850.00 \times 12$, divided by 365 days.
9. The Tenant has made no rent payments since the date of termination in the N12 Notice of Termination.
10. The Tenant was required to pay the Landlord \$4,389.75 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to October 5, 2022.
11. The Landlord incurred costs of \$186.00 for filing the application and is entitled to reimbursement of those costs.
12. There is no last month's rent deposit.

Relief from Eviction

13. 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. Additionally, the Tenant did not attend the hearing to provide any evidence that would be relevant to my analysis under section 83.

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 14, 2022.
2. If the unit is not vacated on or before November 14, 2022, then starting November 15, 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 15, 2022.
4. The Tenant shall pay to the Landlord \$4,389.75, which represents compensation for the use of the unit from May 1, 2022 to October 5, 2022.
5. The Tenant shall pay to the Landlord \$186.00 for the cost of filing the application.
6. The total amount the Tenant owes the Landlord is \$4,575.75.
7. The Tenant shall also pay the Landlord compensation of \$27.95 per day for the use of the unit starting October 6, 2022 until the date the Tenant moves out of the unit.
8. If the Tenant does not pay the Landlord the full amount owing on or before November 14, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 15, 2022 at 4.00% annually on the balance outstanding.

November 3, 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 May 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.