



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

Citation: Ficic v Bobbitt, 2022 ONLTB 9460

Date: 2022-11-02

File Number: LTB-L-015456-22

In the matter of: 1266 QUEENSTON RD
CAMBRIDGE ON N3H3L2

Between: Misrada Ficic, Redzep Ficic Landlord

And

Jerry Bobbitt, Merna Bennett, Valerie Bobbitt Tenant

Misrada Ficic, Redzep Ficic (the 'Landlord') applied for an order to terminate the tenancy and evict Jerry Bobbitt, Merna Bennett, Valerie Bobbitt (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 17, 2022, at 9:00 A.M.

The Landlord, the Landlord's Legal Representative, Ms. Jane Dean, the Tenant, Mr. Jerry Bobbitt, and the Tenant's Legal Representative, Ms. Laura Florence, attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. Therefore, the tenancy shall be terminated on March 31, 2023.
3. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination-Landlords' Children's Use

On March 15, 2022, the Landlord served the Tenant an N12 notice of termination with the termination date of May 29, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords' children for a period of at least one year.

Good Faith

2022 ONLTB 9460 (CanLI)

4. The Landlord, Ms. Misrada Ficic, testified that she was 62 years-old and her husband “Joe”, who is 80 years old requires her primary attention for medical reasons, and asserted that both of their adult sons, who are in their mid-thirties and are both on the autism spectrum, desire to live independently. She further testified the rental unit was only 15 minutes away and that geographically, the rental unit was an ideal place to live for her sons. She also testified the outdoor area of the property and the rental unit itself, were ideal conditions for her sons to live comfortably, and provided them with a safe and secure environment as they continue to live with their respective challenges.
5. The Landlords’ witness, Mr. Arjan Ficic (Landlords’ son), testified that both siblings feel that they are at the stage in their lives where they are ready to move into the rental unit, and live independently. The Landlords’ witness further testified that he has been employed for the past eight years, and believes both he and his brother are capable of living independently and they were both very excited with the prospect of moving into the rental unit.
6. The Tenant testified he lived in the rental unit with his sister and elderly mother. The Tenant asserted he believed the Landlords had ulterior motives that related to the creation of a second rental unit, the possibility of re-renting the rental complex at a higher rent, or the possible sale of the property. In addition to this, the Tenant testified that this was the second termination notice, based on a previous N12 notice served in March 2021, with a termination date of July 29, 2021, (#SWL-51787-21). This application was withdrawn at a hearing before the Board on March 8, 2022.
7. Declarations from both of the children were submitted to the Board, and I find the Landlords’ evidence credible, that the two brothers genuinely intend to move into the rental unit, and intend to reside there for a minimum of a one-year period.
8. Therefore, I find that the Landlords have proven that they in good faith require possession of the rental unit for the use of their two children.

Compensation and Rent Deposit

9. The Landlord testified that she mailed a cheque for compensation to the Tenants, between April 1, 2022, and April 11, 2022, in an amount equal to one month's rent. The cheque was dated April 14, 2022, and evidence of this compensation cheque was submitted to the Board. The Tenant claimed he did not receive the compensation cheque, despite the Landlord’s testimony that the cheque was mailed to the Tenants, and the cheque was, therefore, never deposited.
10. Based on the testimony and submissions at the hearing, and on the balance of probabilities, I find the Landlord’s evidence and testimony to be credible, and therefore, satisfied the requirement to pay compensation in accordance with the Act. I hereby exercise my discretion to grant the Landlords an extension of time until November 30, 2022, to pay the compensation. It was uncontested at the hearing that the Landlords corresponded with the Tenants, and credited the rent for October 2022, since the compensation cheque was not deposited.

11. The Landlord also collected a rent deposit of \$1,200.00 from the Tenant August 30, 2012, and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$262.50 was paid to the Tenant on May 25, 2021. Interest is owing to the Tenant for the period from May 26, 2021 to the eviction date of March 31, 2023.
12. 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

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 not be unfair to postpone the eviction until March 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenant testified the circumstances of the Tenants was such that their respective ages of 70, 71 and 91, would create significant challenges in their efforts to seek alternative accommodation. I find that these circumstances warrant a postponement of eviction to allow time for the Tenants to continue their search for alternative accommodation, which the Tenant testified has been ongoing since the spring of 2021.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated on March 31, 2023. The Tenants must move out of the rental unit on or before March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 1, 2023, the Landlords 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 Landlords on or after April 1, 2023.
4. The tenancy between the Landlords and the Tenants continues and the tenant shall pay to the Landlords new rent on time and in full as it comes due and owing for the period commencing November 1, 2022.
5. One month's compensation of \$1520.00 shall be applied as a credit towards rent for the month of October 2022, and the extension to pay compensation, granted to the Landlord until November 30, 2022.
6. Last month's rent deposit of \$1200.00 shall be applied to the last month of the tenancy. Interest the Landlord owes on the rent deposit shall also be applied to the last month's rent at that time for the period from the period beginning May 26, 2021 to the eviction date.
7. The Tenant shall pay the Landlord compensation of \$49.97 per day for the use of the unit starting April 1, 2023 until the date the Tenant moves out of the unit if the Tenants do not vacate the rental unit.

November 2, 2022
Date Issued

Steven Mastoras
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 October 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.