



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

Citation: Suntharampillay v Harris, 2022 ONLTB 9998

Date: 2022-11-01

File Number: LTB-L-016004-22

In the matter of: 67 MAPLE RIDGE CRES
MARKHAM ON L6E1V2

Between: Gnanathasan Suntharampillay Landlord

And

Mark Harris Tenants
Rose Scarlett-Harris

2022 ONLTB 9998 (CanLII)

Gnanathasan Suntharampillay (the 'Landlord') applied for an order to terminate the tenancy and evict Mark Harris and Rose Scarlett-Harris (the 'Tenants') because:

- the Landlord and the Landlord's spouse 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 October 19, 2022.

Only the Landlord attended the hearing, who was self-represented. His son, Mithupan Gnanathasan, also attended and served as a translator.

As of 9:33 a.m., the Tenants were 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. The rental unit is a detached house. The Landlord requests an order terminating the tenancy so that he and his spouse can occupy the unit for personal use.
2. For reasons that follow, the application is granted.
3. I accept the Landlord's unchallenged testimony that the following is true:
 - a. The Tenants moved into the unit approximately five years earlier. The tenancy is a month-to-month tenancy.

- b. An N12 notice of termination was delivered to the Tenants on March 11, 2022 informing them that the Landlord's and the Landlord's spouse intends to move into the rental unit and occupy it for at least one year.
- c. The date of termination identified on the N12 was May 31, 2022.
- d. The monthly rent is \$1,950.00.
- e. The Landlord paid the Tenants \$2,050.00 compensation by cheque dated April 29, 2022.
- f. The Tenants have yet to vacate the rental unit.

Good faith

4. The evidence supports a finding that the Landlord issued an N12 notice of termination indicating that the Landlord and the Landlord's spouse, in good faith, intends to occupy the unit for residential purposes.
5. Subsection 48(1)(a) and (b) of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord or the landlord's spouse in good faith requires possession of the unit for residential occupation for a period of at least one year.
6. The test of good faith is outlined in a series of judicial decisions. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is a 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 means that the Landlord sincerely intends to occupy the rental unit. Although the Landlord may have other motives for selecting a particular rental unit, these would not affect the good faith of the Landlord's notice.
7. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court added that while the motives of the Landlord are "largely irrelevant", as determined in *Salter*, the Board may consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the residential unit.
8. The Landlord testified that he and his spouse will be moving into the rental unit once the Tenants vacate shortly after completing some minor cleaning and repairs as the Tenants have occupied the unit for 5 years, which he estimates to be approximately a few weeks to one month's time. The Landlord testified that one of the reasons for moving into the unit is because he travels to work and the location of the unit to his place of employment would allow him to save money on fuel.
9. In response to questions posed by the Board, the Landlord stated that another reason he wishes for himself and his spouse to move into the unit is that the house they currently reside in will be occupied by his son. Submitted into evidence by the Landlord in support of his testimony was an N12 notice dated March 11, 2022 with a termination date of May 31, 2022 and a Certificate of Service affirmed on March 14, 2022 confirming service of the N12 on March 11, 2022. Also submitted into evidence was an Affidavit affirmed on March 14, 2022.

10. I find that, based on the uncontested evidence presented at the hearing, the Landlord in good faith requires possession of the rental unit for his own and his spouse's use as indicated in the N12 notice.

Compensation

11. The evidence supports a finding that the Landlord paid the one-month compensation to the Tenants in compliance with the Act.
12. Subsections 48.1, 55.1 and 83(4), when read together, require that landlords who terminate a tenancy for their own and their spouse's use must provide compensation no later than the termination date indicated on the notice, and the Board is prohibited from ordering an eviction if a landlord had not complied with these provisions
13. There is no dispute that the Landlord paid \$2,050.00 by cheque to the Tenants in and around April 29, 2022, which is consistent with the requirements set out in subsections 48.1 and 55.1 of the Act and, as such, would not be grounds for refusing to order an eviction under subsection 83(4). A photograph of the cheque was entered into evidence by the Landlord in support of his testimony.
14. Based on the uncontested evidence, I find that the Landlord's provision of the cheque constitutes payment of the required compensation.

Relief from Eviction

15. Subsection 83 (2) of the Act requires the Board to review all of the circumstances and consider whether or not it should exercise its powers under subsection 83(1). Having considered the circumstances, I find that it would not be unfair to postpone the eviction pursuant to subsection 83(1)(b) until November 30, 2022.
16. Although the Tenants did not attend the hearing to provide direct evidence on how an eviction would impact them, the Landlord testified that a delayed eviction would not prejudice him or his spouse. In response to questions posed by the Board, the Landlord had limited knowledge of the Tenants employment or health status, but confirmed that as far as he knew the Tenants lived without children or other occupants. He reiterated they had lived in the unit for approximately 5 years.
17. Considering all of the evidence and, notwithstanding the Landlord in good faith requires possession of the rental unit for his and his spouse's use, I find that, pursuant to subsection 83(1)(b), it would not be unfair to the Landlord to delay the eviction until November 30, 2022. The Tenants have lived in the unit for approximately 5 years, a length of time from which I infer they have a significant connection to the community such that they would need time to seek alternative accommodation which I think is fair and appropriate.

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 November 30, 2022.
2. If the unit is not vacated on or before November 30, 2022, then starting December 1, 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 December 1, 2022.
4. The Tenants shall also pay the Landlord compensation of \$64.11 per day for the use of the unit starting October 20, 2022 until the date the Tenants moves out of the unit, less any amount already paid.
5. If the Tenants do not pay the Landlord the full amount owing on or before November 30, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 30, 2022 at 4.00% annually on the balance outstanding.

November 1, 2022

Date Issued

Emile Ramlochan

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 13, 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.