



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

Citation: Wichmann v Rimmington, 2022 ONLTB 10132

Date: 2022-10-31

File Number: LTB-L-006032-22

In the matter of: 127 LIDDARD ST
BRACEBRIDGE ON P1L1M5

Between: Clifford Wichmann Landlord

And

Cassandra Rimmington Tenants
Mike Van ekelenburg

Clifford Wichmann (the 'Landlord') applied for an order to terminate the tenancy and evict Cassandra Rimmington and Mike Van ekelenburg (the 'Tenants') 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 August 24, 2022.

The Landlord; the Landlord's legal representative, Inna Feshtchenko; and the Tenant, Mike Van Ekelenburg, attended the hearing. Mike Van Ekelenburg attended the hearing on behalf of both Tenants.

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 effective November 30, 2022.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On November 30, 2021, the Landlord gave the Tenants an N12 notice of termination with the termination date of January 31, 2022. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation by himself, his spouse and his children.
4. Based on the evidence before me, I am satisfied that 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.

5. The Landlord testified that he recently moved from California to Ontario with his wife and two children. The Landlord testified that they are currently living in another house that he owns but that house is not suitable to them for several reasons. The Landlord testified that his current house is very expensive to carry because it has multiple maintenance issues, and it is unsafe for his children. The Landlord testified that his current home is also quite large, and the bills are high. The Landlord testified that it would be more affordable for his family to move into the rental unit, which is smaller than his current home. The Landlord testified that he also intends to move into the rental unit because it is closer to his children's school and to the inn that he owns and operates. The Landlord testified that he will likely live in the rental unit for two or more years. The Landlord testified that if the application is granted and he moves into the rental unit, he intends to convert his current home into room rentals and he is in the process of coordinating this with a local hospital.
6. The Tenant questioned the Landlord's good faith intention to move into the rental unit. The Tenant testified that the Landlord owns several other properties. The Tenant testified that the Landlord also owns a company called Blue Planet and he believes that the company also owns the rental unit. The Tenant questioned why the Landlord wishes to move into the rental unit as opposed to other units he owns. The Tenant testified that he believes that the Landlord wishes to evict him so he can re-rent the unit for a higher rent.
7. However, the Tenant did not submit any concrete, objective evidence to support his position. The Landlord acknowledged that he owns Blue Planet, which is a property management company, but he owns the rental unit in his own name. The Landlord submitted the land registry, which lists him as the only registered owner of the rental unit. The Landlord testified that he intends to move into the rental unit because it is the only single-family home he owns, other than his current home.
8. Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord has satisfied the "good faith" test as set out in section 48 of the *Residential Tenancies Act, 2006* (the "Act") and in the leading case of *Salter v. Beljnac*, 2001 CanLII 40231. The Tenant did not present any evidence to corroborate his claim that the Landlord intends to re-rent the rental unit and increase the rent after he moves out. I note that the fact that the Landlord owns other properties that may be available to him is not material to my determination. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the landlord's motives in seeking possession of the rental unit are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property.
9. The Landlord compensated the Tenants an amount equal to one month's rent by January 31, 2022. By letter dated January 27, 2022, the Landlord waived the Tenants' rent for January 2022 as payment for the required compensation.

Daily compensation

10. The Tenants were required to pay the Landlord \$12,805.48 in daily compensation for use and occupation of the rental unit for the period from February 1, 2022 to August 24, 2022.
11. Based on the Monthly rent, the daily compensation is \$62.47. This amount is calculated as follows: \$1,900.00 x 12, divided by 365 days.

12. Since the termination date in the notice of termination, the Tenants paid the Landlord \$2,100.00 in rent. The Tenants paid the rent for February 2022 and \$200.00 toward the rent for March 2022.
13. There is no last month's rent deposit.

Relief from eviction

14. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until November 30, 2022 pursuant to subsection 83(1)(b) of the Act. The Tenant lives in the rental unit with his girlfriend and three children. The Tenant testified that he would like to remain in the rental unit because he does not own a car and his daughter is able to take a local bus to school. The Tenant testified that the rental unit is close to a hospital which has been helpful for his other child who has health conditions. The Tenant testified that he has looked for other places to live nearby and the rent is significantly higher than the rental unit. The Tenant testified that if the application was granted, he would need months to move. In the circumstances I find it appropriate to extend the eviction date to November 30, 2022. This will provide the Tenant additional time to find another suitable place to move (in addition to the two months since the hearing was held). This relatively short extension of time should not cause the Landlord significant prejudice.

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 pay to the Landlord \$10,705.48, which represents compensation for the use of the unit from February 1, 2022 to August 24, 2022.
5. The Tenants shall also pay the Landlord compensation of \$62.47 per day for the use of the unit starting August 25, 2022 until the date the Tenants move out of the unit.
6. 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 December 1, 2022 at 4.00% annually on the balance outstanding.

October 31, 2022
Date Issued

Anna Solomon
Vice Chair, 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 June 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.

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