



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

Citation: YAN v NADI, 2022 ONLTB 9125

Date: 2022-10-31

File Number: LTB-L-015172-22

In the matter of: 586 MCBEAN AVENUE
NEWMARKET ON L3X2N6

Between: WEI YAN Landlord

And

AHMAD NADI, MAHMOUD NADI, SOHEILA AHMADI, YASIN NADI Tenants

WEI YAN (the 'Landlord') applied for an order to terminate the tenancy and evict AHMAD NADI, MAHMOUD NADI, SOHEILA AHMADI, YASIN NADI (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.

This application was heard by videoconference on July 12, 2022.

The Landlord, the Landlord's Legal Representative, Yun Tao Li, and the Tenant, Ahmad Nadi, attended the hearing.

Determinations:

1. For the reasons that follow, 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. The tenancy between the Landlord and the Tenants will be terminated.
2. The Tenant asserted that he does not speak English and that he wants the matter to be adjourned so that he can have a translator. I denied the Tenant's request to adjourn this matter, because I was satisfied that he can speak clearly in English. I had no reason to believe that the Tenant could not communicate effectively in English after speaking with him at the start of the hearing.
3. The Tenants were in possession of the rental unit on the date the application was filed.
4. On October 24, 2021, the Landlord served an N12 notice of Termination ('N12 notice') on the Tenant. The N12 notice states that the Landlord requires the unit, because she intends to move into the rental unit with her son and occupy it for at least one year. The N12 notice had a termination date of December 31, 2021.

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5. In support of her application, the Landlord filed a sworn affidavit dated October 23, 2021, confirming that she requires the rental unit for residential purposes and that she intends to reside in it for at least one year.
6. The Landlord also provided a copy of the compensation cheques each in the amount of \$2,100.00 dated November 4, 2021, and December 3, 2021, that she gave to the Tenant. The Landlord testified that she sent 2 compensation cheques to the Tenant, because he rejected the first one.

Evidence

7. The Landlord testified that she currently rents a unit from a friend in North York. Her friend is planning to sell the property, because she has family and medical issues. The Landlord testified that she only owns one property in Canada and that once her friend sells her property, she will have no where to go and this is part of the reason why she wants to regain possession of the rental unit.
8. The Landlord provided a copy of the listing of her friend's property where she currently resides to prove that her friend wants to sell the rental unit that she is currently renting.
9. The Tenant argued that the Landlord tried to increase the rent in June 2021 and that this is the reason she is alleging that she requires the rental unit.

Analysis

10. The leading case on the determination of good faith in a landlord's own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a residence. The test before me in this case is whether the Landlord genuinely intends to move into the rental unit and occupy it for a period of at least one year.
11. The Landlord provided clear, consistent and uncontested evidence that her and her son intend to move into the rental unit for at least one year. The Landlord supported her position with the sales listing of the rental unit where she currently resides.
12. The Tenant claimed that the Landlords served him with the N12 Notice of Termination, because she wants to increase the rent. The Tenant did not provide any evidence to substantiate this allegation. The Landlord testified that she was made aware that her friend wanted to sell the rental unit in September 2021, which is well after the date the Tenant alleged that the Landlord wanted to increase the rent in June 2021.
13. I accept the Landlord's evidence that she has a genuine intention to move in the rental unit for the purposes of residential occupation for at least one year. Therefore, I find that the N12 notice was served in good faith.
14. I also find that the Landlord has paid the required compensation to the Tenants as prescribed by section 48.1 of the Act.
15. Therefore, I am granting the application and terminating the tenancy.

16. The Landlord collected a rent deposit of \$2,100.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$101.54 is owing to the Tenant for the period from November 1, 2018, to July 12, 2022.
17. 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.

Request for Relief

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act for the reasons that follow.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must vacate the rental unit on or before December 9, 2022.
2. If the unit is not vacated on or before December 9, 2022, then starting December 10, 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 10, 2022.
4. The Tenants shall pay to the Landlord \$11,123.40, which represents compensation for the use of the unit up to July 12, 2022, less the rent deposit and interest the Landlord owes on the rent deposit. Any payments made by the Tenants to the Landlord from January 1, 2022, onwards shall be subtracted from this amount.
5. The Tenants shall also pay the Landlord compensation of \$69.04 per day for the use of the unit starting July 13, 2022, until the date the Tenants move out of the unit.
6. The total amount the Tenants owe the Landlord is \$11,123.40.
7. If the Tenants do not pay the Landlord the full amount owing on or before November 11, 2022, the Tenants will start to owe interest. This will be simple interest calculated from November 12, 2022, at 4.00% annually on the balance outstanding.

November 28, 2022
Date Issued

 Poeme Mangiat
 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.

