



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

Citation: Gowlett v Belcourt, 2022 ONLTB 9534

Date: 2022-10-24

File Number: LTB-L-006601-22

In the matter of: 2, 308 BALM BEACH RD W
TINY ON L0L2J0

Between: Don Gowlett Landlord
Wendy Gowlett

And

Megan Belcourt Tenant

Don Gowlett (the 'Landlord') applied for an order to terminate the tenancy and evict Megan Belcourt (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 September 6, 2022.

The Landlord Don Gowlett (DG), the Landlord Wendy Gowlett (WG), the Landlord's representative T. Landriault, the Tenant and the Tenant's representative J. Cramer attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on January 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Preliminary

3. The Landlord sought to amend the application to include WG as a landlord on the application, which I allowed, as they are both legal owners and I find WG meets the definition of a landlord under the Act. WG and DG are married and although only DG was listed as a landlord on the Form N12, I do not find that this omission rendered the notice invalid.
4. The Landlords gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. As a preliminary matter, the Tenant disputed proper service of the N12

was given, stating she was merely served with an envelope containing a declaration from the Landlord, with no form N12.

5. The Landlord WG filed a certificate of service stating the N12 was served on January 29, 2022 and stated on the day of service, she attended at the rental unit alongside DG. WG was sitting in the passenger seat of the vehicle and out of curiosity, she testified opening the envelope, looking at its documents and placing them back into the envelope.
6. The Tenant did not inform the Landlords at a later date that the Form N12 was missing and stated: "its not my responsibility to notify the Landlord that they did not serve the proper documents". Overall, I found the Landlords' detailed account of the service of the N12 more believable than the Tenant's general receipt denial - which denial of receipt was not substantiated in subsequent communications with the Landlords.
7. The Landlords have thus met the 60 day notice requirement of [s.48\(2\)](#) of the [Act](#), and I am satisfied that the Landlords have met the declaration requirement of [s.72\(1\)\(b\)](#) of the Act and the one month's compensation requirement of [s. 48.1](#) of the Act.
8. The Landlords claim they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords' child, CD.
9. The issue to be determined in this application is whether the Landlords have satisfied the "good faith" requirement set out in subsection [48\(1\)](#). In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), the court clarified the Landlord's good faith requirement as follows:

In my view, [s. 48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

10. The residential complex was purchased by the Landlords in December 2021 and is comprised of 3 identical units: Unit #1 & #2 are tenanted, while Unit #3 was occupied by the prior seller of the residential complex.
11. The Landlords have 4 children and DG testified the residential complex was purchased for the purpose of residential occupation by 3 of his children. Upon the seller vacating unit #3, DG testified that this unit was used periodically by guests, the Landlords themselves and at times, rented out as an Airbnb. DG testified that the proposed occupant, CD, has been "couch surfing" with friends, and recently finished school in North Bay, Ontario in June 2022. She now works close by in Midland, Ontario and seeks to move into unit #2 for the purpose of residential occupation.
12. The Tenant challenged the Landlords' professed intent and questioned why CD would not relocate to unit #3 which has been used as an Airbnb and for which CD has also been seen for short periods of time in the past.
13. While I can appreciate the Tenant would prefer for CD to live in another available unit, the issue in this application is whether the Landlords' professed intent to want to reclaim the rental unit for CD is genuine. Overall, I found the Landlords' evidence believable as to the intended use. Given the Landlords' expressed intent for his children to eventually reside at

the residential complex, combined with CD's familiarity and connection to the area through her work, I am satisfied on a balance of probabilities that CD will occupy the rental property for the purpose of residential occupation for a period of at least one year, once vacant possession is obtained.

Section 83

14. 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 January 31, 2023 pursuant to subsection 83(1)(b) of the Act.
15. The Tenant has lived at the rental unit for approximately 8 years, and resides with her 11-year old son who attends school in the area. She wants to remain in the area, noting her parents and her son's father live close by. In the event eviction were ordered, the Tenant requested until June 2023, stating she has looked for alternative accommodations and has had difficulty finding housing in her price range in this area.
16. While I appreciate the Landlord's desire for their child to move into the rental unit as soon as possible, I find that some postponement of the eviction is reasonable in the circumstances given the challenges in finding alternative accommodations outlined by the Tenant and since it appears from the evidence that the Landlord's daughter appears to have alternative housing in the meantime.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated on January 31, 2023. The Tenant must move out of the rental unit on or before January 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 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 February 1, 2023.
4. The Tenant shall also pay the Landlords compensation of \$31.23 per day for the use of the unit starting February 1, 2023 until the date the Tenant moves out of the unit.

October 24, 2022

Date Issued

Peter Nicholson

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 August 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.