



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

Citation: Smith v James aka Marsha-Ann James aka Marsha ann charisha James, 2022 ONLTB 8715

Date: 2022-10-20

File Number: LTB-L-011878-22

In the matter of: 7, 20 KIDD TERR
NORTH YORK ON M3J3S8

Between: Marc Smith Landlord

And

Marsha-Ann James aka Marsha-Ann James aka Marsha Ann Tenant
Charisha James

Marc Smith (the 'Landlord') applied for an order to terminate the tenancy and evict Marsha-Ann James aka Marsha-Ann James aka Marsha Ann Charisha James (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 22, 2022.

The Landlord, the Landlord's Legal Representative, Masoud Tchavoshi, and the Tenant attended the hearing.

Determinations:

Preliminary Issue

1. The Tenant had submitted extensive evidence that appeared to be with respect to major renovations/repairs being done on the unit. When questioned as to the purpose of the evidence, the Tenant advised she wished to raise it under section 83(3)(a) of the Residential Tenancies Act, 2006 (the 'Act'), that eviction should be denied because the Landlord is in serious breach of his responsibilities under the tenancy agreement to maintain and repair the unit/complex.
2. The Landlord's Legal Representative submitted that the Tenant has in front of the Board a T2 and T6 application that are waiting to be heard. Plus, the Tenant raised the same issues on September 19, 2022 and was cautioned by the Member that she could not duplicate issues already in front of the Board. As previously decided, these issues should

be heard under the Tenant's applications. Further, due to the Landlord's father's deteriorating health, the Landlord requires the unit as soon as possible.

3. The Tenant responded that she did have her own T2 and T6 applications filed, they went in front of the Board once, but the T6 needs amended with dates therefore they were adjourned. Last week's hearing was also adjourned because there was insufficient time to hear it. The Tenant agreed that she was told she could not raise her own issues under section 82 of the Act because it would be a duplication of issues. The Tenant submitted that she should be permitted to raise them under section 83 of the Act because her cases have not been heard.
4. The Landlord's Legal Representative responded that as the Tenant's issues are live, they should be heard under her own application, not section 83.
5. For the reasons that follow, the Tenant's request to raise her issues under section 83(3)(a) of the Act is denied and the matter shall proceed on its merits. The Tenant has already filed her own applications on these issues, they went before the Board once and were adjourned for the Tenant to amend the T6 application. To allow the Tenant to raise them here would be inappropriate as it would require a finding on the merits of those applications. Further, the Tenant submitted approximately 900 pieces of evidence with no details as to what the specific issues are or when they happened. Section 83(3)(a) requires that the Landlord must be in a serious breach of its obligations at the time of the hearing. To assess this would be a duplication of what has to take place at the Tenant's own hearing. Further, there was no amendment to the T6 on file, therefore the Tenant has not yet complied with this request which is necessary for her application to proceed.
6. The Tenant objected to the doctor letter being admitted because it was not served 7-days prior to the hearing; she received it yesterday.
7. The Landlord's Legal Representative submitted that he sent it yesterday because that was when he realized it had not been submitted.
8. The evidence was allowed in during the Landlord's testimony as the Tenant had a day to review the one-page document, plus it would be more prejudicial to the Landlord to not admit it as it substantiates his father's condition; this is a necessary element for wanting the unit for a caregiver.

Merits

9. The Landlords in good faith require possession of the rental unit for the purpose of residential occupation for his father's caregiver for a period of at least one-year. I say this for the reasons that follow.
10. The Landlord's application is based on a notice of termination issued pursuant to s.48 of the *Residential Tenancies Act, 2006* (the 'Act') alleging a caregiver for the Landlord's father wishes to live in the rental unit. The notice is dated February 28, 2022 and sets out a date for termination of the tenancy of April 30, 2022.

11. The Tenant was in possession of the rental unit on the date the application was filed.
12. The monthly rent is \$680.00. There is no last month rent deposit.
13. It is undisputed that the one-month compensation, in the amount of \$680.00, went to the rent for March 2022.
14. The Landlord testified that the rental complex was a rooming house, the Tenant is currently the only person renting there. The other tenants also received N12 notices and have already vacated. He is the Power of Attorney for his father, Douglas Smith, who has Alzheimer's Disease; he is midway through the disease and has a life expectancy of less than 5-years. His father will be moving into room 7, and will have full-time caregivers who will also be residing in the home; there are not going to be any rooms rented out to tenants, the house will be for his father and the caregivers. There will likely be 3 to 4 caregivers, and once they move in, then he will move his father in. The Landlord referred to a letter from his father's doctor that corroborated the illness and need for full-time care.
15. The Landlord also testified that he had served previous N12s. On November 30, 2021, he served the Tenant a notice, but he did not file it in time. A N12 dated April 28, 2021 was served to another tenant, Larry Jackson, but they were negotiating, so as not to get the Board involved. A N12 dated Nov 30, 2021 was served to Larry Jackson, but he did not pay the compensation in time so he did not file it. He gave the Tenant a notice dated April 28, 2021, but he waited too long to file and it was past the 30-day deadline. All notices were for the same reason as now. He hired a representative to get things right.
16. The Landlord further testified that due to his father's condition he needs the unit as soon as possible; the only way his father will get all the care he requires is to get vacation possession of the unit so he can move in the caregivers and his father. The Landlord requested the standard 11-day eviction order.
17. The Tenant testified that the N12 notice is in bad faith, the Landlord does not need the house for the reason given; she does not believe caregivers and then the father are moving in. The Tenant feels she is not able to raise what she wants, she believes the Landlord only wants her out because she filed her applications.
18. The Tenant also testified that it is unfair that the Landlord wants her out when she has done nothing wrong to warrant eviction; she wants to move when she is ready, not because the Landlord wants her unit for a caregiver. The Landlord's application should be dismissed, but if eviction is granted, she needs more than 11 days. The Tenant wants to get her own place, not a rooming house, but she has not looked at any other places so does not know how long this would take.
19. The Tenant further testified that being forced to move is wrong; she is renting from a white person, the Landlord wants her out because of her colour. The Tenant reiterated that a landlord should not be able to evict a tenant when a tenant has done nothing wrong

Analysis

20. Section 48(1) of the Act provides that a landlord may give notice of termination if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by a person who provides or will provide care services to the parent of the

landlord, if the person receiving the care services resides or will reside in the building in which the rental unit is located

21. The leading decision concerning applications for termination of a tenancy for landlord's own use is the Divisional Court decision of *Beljinac v. Salter* (June 15, 2001), Toronto Docket No. 715/00, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.) Re: TSL-21378. The Court found that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal.
22. Here I find the Landlord has a genuine intention to move his father's caregivers into the rental complex and then move his father in, in order for his father to receive the necessary full-time care due to his medical condition. The Landlord's testimony was supported by a letter from his father's doctor. Although the Landlord served four other N12 notices, he was forthright in his testimony about the errors he previously made, therefore I do not find these other notices are not indicative of bad faith. I accept that this time the Landlord wanted to ensure things were done correctly so he could get vacant possession of the unit for his father's caregiver.
23. The Tenant did not present any evidence to support a finding of bad faith and I find there is insufficient nexus between the filing of her T2 and T6 applications, November 24, 2020 and June 14, 2021 respectively; the Landlord filed his application on April 3, 2022. As for the previous notices, all were for the same reason as the notice the Tenant received for this hearing. As previously stated, the other notices do not support a finding of bad faith; they point to the Landlord making mistakes that were fatal to any of those notices either proceeding to hearing and/or being filed.
24. This application is not about the Tenant being evicted because she has done something wrong; it is because the Landlord requires the unit for a lawful reason under the Act.
25. There is also no evidence to support the Tenant's allegation that the Landlord wants her out because she is non-Caucasian. The Tenant's ethnicity was never a factor in the hearing, the reason for the hearing and notice of eviction was that the Landlord requires the unit for a caregiver's residential occupation.
26. For all the above reasons, I find based on the evidence and testimony before me, that the Landlord has proven on a balance of probabilities that he requires the rental unit for one of his father's caregivers, and that once the caregivers are living in the rental complex, his father will also be moved into the house.
27. The issue of the rent being lower than the \$600.00 is not an issue for this application and does not affect my determination. If it is an error, then it is to the Tenant's benefit.

Relief from Eviction

28. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has not made any effort to look for other accommodations and wanting an unspecified time to move is not reasonable. The Tenant did not testify to any disability related issue that would prevent her from moving, just that she would need help doing so. Due to the Landlord's father's

medical condition, there is more prejudice to the Landlord if the eviction is delayed. Although she may not want to, the Tenant is able to move to another rooming house.

29. This order contains all the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before October 31, 2022.
2. If the unit is not vacated on or before October 31, 2022, then starting November 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 November 1, 2022.
4. If the Tenant does not vacate the rental unit on or before October 31, 2022, then the Tenant shall pay the Landlord compensation of \$22.36 per day for the use of the unit starting November 1, 2022, until the date the Tenant moves out of the unit.

October 20, 2022

Date Issued

Diane Wade

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 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.

