



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

Citation: D'Angelo v Dahmer, 2024 ONLTB 46272

Date: 2024-06-26

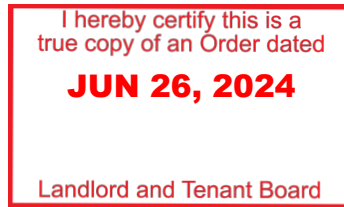
File Number: LTB-L-012895-24

In the matter of: Basement, 38 Casa Nova Drive
Vaughan Ontario L4H2Z9

Between: Annette D'Angelo

And

Bryan Dahmer



Landlord

Tenant

Annette D'Angelo (the 'Landlord') applied for an order to terminate the tenancy and evict Bryan Dahmer (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 April 23, 2024. The Landlord and the Tenant attended the hearing. The Landlord was represented by Peter Giblett, paralegal.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Landlord's application is based on a N12 notice of termination served to the Tenant on December 24, 2023, with a termination date of February 29, 2024. The notice asserts that the Landlord requires the rental unit for her own personal use or a period of at least one-year.
3. The Landlord paid the Tenant compensation equal to one month's rent. The parties agree that the February 2024 rent has been waived.
4. The residential complex is a single detached dwelling. The Tenant resides in the basement unit and the Landlord resides on the upper unit.

Evidence:

5. The rental unit in question is a 1 bedroom, 1 bathroom apartment. The Landlord's unit consists of two bedrooms, one of which the Landlord is currently using as an office space.

6. The Landlord testified that she requires the basement portion of the rental unit for storage of her belongings and to convert the bedroom of the rental unit to her office space.
7. When the tenancy commenced in November 2017, the Landlord was not working and as such, rented the basement portion of her home to generate income. On or about October 2018 the Landlord became employed as a Law Clerk. Since the Covid-19 pandemic occurred in 2020, the Landlord has been working primarily from home and has been using her spare bedroom as an office space.
8. The Landlord stated that if vacant possession is obtained, she will move her office space to the basement bedroom and use the spare bedroom on the main floor for her guest. The Landlord testified that her mother and sister are ill and as such, are required to reside on occasion with her.
9. The Tenant did not dispute that the Landlord intends to use the rental unit for storage and/or an office space. The Tenant also did not dispute the Landlord's testimony that she would not re-rent the rental unit once vacant possession is obtained.
10. The Tenant testified however that the Landlord's N12 notice was served as a purpose to evict the Tenant by any means possible. The Tenant stated that the Landlord has previously filed applications to terminate the tenancy that have been unsuccessful. The Tenant submitted into evidence email correspondence between the parties dated October 28, 2021, which confirms that at this point the Landlord requested that the Tenant vacate the rental unit due to concerns with harassment, damages and substantial interference. The Board's records confirm that the Landlord's applications filed for these issues were dismissed at a hearing before the Board.

Analysis:

11. The Landlord's notice was served pursuant to section 48(1) of *the Residential Tenancies Act, 2006*, (the Act) which states in part:

48 (1) A landlord may, by notice, terminate a tenancy if 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 by,

(a) the landlord;
12. In *Feeney v. Noble, 1994 CanLII 10538* (ON SC), the Court held that the test of good faith is 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 simply means that a sincere intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."

13. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, “largely irrelevant”, the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property.”
14. Based on the evidence and submissions before the Board, I am satisfied on a balance of probabilities that the Landlord requires the rental unit for her own personal use for a period of at least one year.
15. The Landlord’s evidence about her intended use for the rental unit was consistent and credible throughout the proceedings and the Tenant himself did not dispute that the Landlord intended to use the rental unit for her own personal use nor did the Tenant lead evidence to suggest that the Landlord intends to re-rent or sell the rental property.
16. Although there is no dispute that the relationship between the parties has deteriorated over the years, I do not find that this diminishes the Landlord’s good-faith intentions and intended use of the rental unit. The Landlord’s testimony about their intended use for the rental unit constitutes residential use of the rental unit as established in the plain reading of the Act and the existing jurisprudence (*Sertic v. Mergarten*, 2017 ONSC 263).

Relief from eviction:

17. 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 August 31, 2024, pursuant to subsection 83(1)(b) of the Act.
18. The Tenant has resided in the rental unit for approximately seven years and the application is one of no-fault to the Tenant. The Landlord currently has adequate housing and as such, I find that it would not be unfair to delay termination to allow the Tenant some additional time to secure alternate housing.

Per-Diem Compensation:

19. Although the application claims per-diem compensation from the termination date set out in the notice (February 29, 2024), at the hearing, the Landlord’s representative withdrew this claim.
20. After the hearing concluded, the Landlord wrote to the Board requesting that this request be withdrawn and that the Board order the Tenant to pay per-diem compensation from February 29, 2024. The Landlord’s request is denied.
21. The Landlord was represented by a licensee of the Law Society of Ontario at the hearing and the Landlord’s representative was the same individual who filed the application on behalf of the Landlord.

22. I find that it would be prejudicial to allow the Landlord's post-hearing request as ordering this remedy would be done in the absence of the Tenant being able to respond to this alleged claim.

23. As such, no per-diem compensation will be ordered as this claim was withdrawn at the hearing.

24. This Order contains all the reasons for this matter. No further reasons will issue.

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 August 31, 2024.
2. If the unit is not vacated on or before August 31, 2024, then starting September 1, 2024, 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 September 1, 2024.

June 26, 2024
Date Issued



Fabio Quattrociochi
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 March 1, 2025 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.