



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

Citation: Hoenow v Murray, 2024 ONLTB 59108

Date: 2024-08-13

File Number: LTB-L-020243-24

In the matter of: 1801, 28 FREELAND ST
TORONTO ON M5E0E3

Between: Tyler Hoenow
Eva Duplessis

And

O'Neill James Murray

I hereby certify this is a
true copy of an Order dated
AUG 13, 2024
Landlord and Tenant Board

Landlord

Tenant

Tyler Hoenow and Eva Duplessis (the 'Landlord') applied for an order to terminate the tenancy and evict O'Neill James Murray (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 July 30, 2024.

The Landlord Tyler Hoenow (TH), and the Tenant attended the hearing.

When the capitalized word "Landlord" is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word "Tenant" is used in this order, it refers to all persons identified as a Tenant at the top of the order.

It is determined that:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated effective August 24, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination

3. On February 29, 2024, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for their own use.
4. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (the 'Act'). Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that he requires, in good faith, the unit for at least one year for the purposes of residential occupation.
5. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a 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 the landlord sincerely intends to occupy the rental unit.
6. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.
7. Moreover, in *Elkins v. Van Wissen*, 2023 ONCA 789, the Court of Appeal for Ontario held, albeit in the context of a bad faith application, that the Board should not restrict itself to consideration of whether there was good faith at the time the N12 was served: see paragraph 43. Therefore, the Landlord bears the burden in this application of establishing, on a balance of probabilities, that they in good faith require the rental for the purpose of their own residential occupation.
8. The Landlord TH, testified that he purchased the rental unit, a condominium, from his mother on January 9, 2024, with the intention of moving into the rental unit with his daughter and living there for a minimum of one year. The Landlord testified that he is currently paying rent where he resides and waiting for the Tenant to vacate as per the N12 notice of termination.
9. The Tenant testified that the Landlord is evicting the Tenant in bad faith and that the notice stems from the Tenant falling behind on his rent. There is no dispute that the parties have already attended the Board on file number LTB-L-090759-23 for arrears of rent and the member ordered the Tenant to pay the rent owing or the Tenancy would be terminated as of August 6, 2024. The Tenant attempted to raise the same issue from that hearing as it related to the Landlord's alleged theft of his belongings from the rental unit. The Tenant alleges that he will be reviewing the order, which was issued by the LTB on July 26, 2024, and he is pursuing his claim about the theft is at the criminal court level. The Tenant confirmed that he has not made any LTB applications against the Landlord about the theft that allegedly took place on or around December 2023. Tenant alleges that he is working with a realtor friend to find a new place to live and requested to remain in the rental unit until the end of August or middle of September 2024, as the Tenant wants to accumulate rent arrears that match the value of his lost belongings of approximately \$32,000.00. The Tenant did not file any evidence to corroborate his testimony, specifically with regards to working with a realtor and the criminal charges against the Landlord.
10. TH testified what his intentions are with the rental unit, that he intends to live in the unit for a minimum of one year with his daughter. He was consistent in his testimony, and he has

given a plausible story and version of events. The Tenant has not presented any concrete evidence to lead me to doubt TH's evidence that he genuinely intends to move into the rental unit. I am satisfied on a balance of probabilities that TH in good faith requires possession of the rental unit for residential occupation.

Compensation

11. Section 48.1 of the Act requires a landlord to compensate a tenant an amount equal to one month's rent if they have given the tenant a notice of termination under section 48.
12. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the Tenant "no later than on the termination date specified in the notice of termination." In the present case, the termination date in the N12 Notice of Termination is April 30, 2024.
13. There was no dispute that the Landlord sent the Tenant a compensation letter outlining that the one-month compensation would be paid by waiving the rent for the month of April 2024 (which the Tenant has not paid to date).
14. Accordingly, I am satisfied that the Landlord complied with their obligation to pay compensation under sections 48.1 and 55.1 by paying the compensation to the Tenant by the termination date in the N12 Notice.

Daily compensation, NSF charges, rent deposit

15. The Tenant was required to pay the Landlord \$7,629.44 in daily compensation for use and occupation of the rental unit for the period from May 1, 2024, to July 30, 2024. The Landlord alleges that the Tenant owes approximately \$32,000.00 in rent arrears as per the Order LTB-L-090759-23.
16. Based on the Monthly rent, the daily compensation is \$83.84. This amount is calculated as follows: \$2,550.00 x 12, divided by 365 days.
17. There is no last month's rent deposit.

Relief from eviction

18. 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. Several months have passed since the service of the notice to terminate. I find no reason to postpone the eviction further, particularly given that the Tenant has not made reasonable efforts to find a new place to live. Accordingly, a standard 11-day eviction order 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 24, 2024.

2. If the unit is not vacated on or before August 24, 2024, then starting August 25, 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 August 25, 2024.
4. The Tenant shall pay to the Landlord \$7,629.44, which represents compensation for the use of the unit from May 1, 2024, to July 30, 2024, less any amount the tenant has already paid.
5. The Tenant shall also pay the Landlord compensation of \$83.84 per day for the use of the unit starting July 31, 2024, until the date the Tenant moves out of the unit.
6. The total amount the Tenant owes the Landlord is \$7,815.44, less any amount the Tenant has already paid.
7. If the Tenant does not pay the Landlord the full amount owing on or before August 24, 2024, the Tenant will start to owe interest. This will be simple interest calculated from August 25, 2024, at 7.00% annually on the balance outstanding.

August 13, 2024
Date Issued

T. Hunt

Teresa Hunt
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 February 25, 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.