



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

Citation: Chih v Kim, 2024 ONLTB 12753

Date: 2024-02-27

File Number: LTB-L-051383-23

In the matter of: 2220, 35 HOLLYWOOD AVE
NORTH YORK ON M2N0A9

Between: Shang-chin Chih

And

Kyu Dong Kim

I hereby certify this is a
true copy of an Order dated
MAR 19, 2024
Landlord and Tenant Board

Landlord

Tenant

Shang-chin Chih (the 'Landlord') applied for an order to terminate the tenancy and evict Kyu Dong Kim (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 February 8, 2024.

The Landlord, Shang-chin Chih, the Landlord's legal representative, Nathan Korenberg, the Tenant's legal representative Grace Yun, and the Tenant Kyu Dong Kim ("Alex") attended the hearing.

Determinations:

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 will be terminated as of April 30, 2024. The Tenant must vacate the rental unit on or before April 30, 2024.
2. The Tenant was in possession of the rental unit on the date the application was filed.

Preliminary Issue

3. The Tenant's legal representative raised a preliminary issue in relation to a discrepancy between the N12 notice and the declaration filed.
4. The submission was that the N12 notice lists the intended occupants to be the Landlord and the Landlord's spouse omitting the Landlord's children who are mentioned in the declaration, and a prior N12. The declaration from the Landlord states:

“IN GOOD FAITH I INTEND TO MOVE INTO THE PROPERTY WITH MY WIFE. WE INTEND TO RAISE CHILDREN HERE, AND WILL RESIDE IN THE PROPERTY FOR AT LEAST ONE YEAR.”

5. The children referred to in the declaration are minor children in grade 10 and 11. The only logical inference to be drawn is that minor children would accompany their parents if their parents were to change residences.
6. In this L2 application, the issue to be decided is the genuine intent of the Landlord to occupy the property with his spouse. This is not an application where a Landlord is intending to move in an adult child to take up residence of a rental unit which would thereby require proof of good faith on the part of the child to occupy the rental unit.
7. I find that the N12 notice and declaration are consistent in that both indicate an intention by the Landlord and the Landlord's spouse to occupy the rental unit.
8. As was advised at the hearing, I do not give effect to this submission and do not find that not listing the Landlord's minor children on the N12 notice to be a fatal error and found that the hearing could proceed.

N12 Notice of Termination

Landlord's Own Use

9. On June 23, 2023, the Landlord gave the Tenant an N12 notice of termination deemed served on June 28, 2023, with the termination date of September 7, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord and their spouse.
10. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation with their spouse for a period of at least one year.
11. The Landlord served a previous N12 notice dated December 4, 2023, with a termination date of July 7, 2023. The Landlord did not file an application based on that previous N12, although the reason for that notice and the the application that is before me now are the same. The Landlord sought assistance after service of the first N12 when the Tenant did not vacate resulting in the notice served in support of this application.
12. The Landlord Shang-chin Chih testified he has been residing in Taiwan for the last 13 years, the same duration of the tenancy.
13. He testified that he and his family decided to move back to Canada and that he had first formed an intention to return 5 years ago but as a result of the pandemic, he and his family could not move back until borders reopened.

14. The Landlord also testified that the decision was made to move back to Canada last year around March (2023) and that he and his family made the trip back in July (2023).
15. The Landlord denied owning any property out of the country and testified that the property he resided in with his family in Taiwan was a rental and he has no other properties.
16. The Landlord testified he and his family currently live with his mother in a two-bedroom condo owned by his sisters and his children sleep on the floor. The Landlord added that he doesn't have room to live and this is why he needs the rental unit, which is a house.
17. The Landlord's evidence remained unchanged on cross examination and confirmed much of his previous testimony.
18. The Tenant's position was that the reason the Landlord served the N12 notice was retaliation for maintenance issues the Tenant reported and as a result of an incident that occurred around April 14, 2023, just prior to service of the N12 notice.
19. The Tenant testified that when there was something to be fixed in the unit, he made the requests to the Landlord but often had to wait for repairs when something was broken.
20. The Tenant submitted text messages the parties exchanged about maintenance issues around the time the N12 notice was served.
21. In the text messages, the parties dispute who should be responsible for the repair costs. The Tenant argued that this dispute resulted in the N12 being served in retaliation.
22. However, there was nothing assistive in the cross examination of the Landlord in relation to maintenance issues and there is no apparent anger or frustration expressed in the text messages on which a determinative finding of retaliation can be made.
23. Aside from the Tenant's belief of the Landlord's motives for serving the N12 notice, there is a lack of objective proof that would invalidate the Landlord's good faith intentions testified to at the hearing.
24. The Landlord has moved back to Canada from Taiwan in July of 2023 and currently resides with his mother, wife, and two children in a two-bedroom condo. I accept the Landlord's evidence that he requires the rental unit because it will provide more living space for his family and he intends to live there for at least one year.
25. Accordingly, the Landlord has proven that he requires the rental unit for his own residential occupation.
26. The Landlord has compensated the Tenant an amount equal to one month's rent by September 7, 2023.

Daily compensation, rent deposit

27. The Tenant was required to pay the Landlord \$12,604.47 in daily compensation for use and occupation of the rental unit for the period from September 8, 2023 to February 8, 2024.
28. Based on the Monthly rent, the daily compensation is \$81.85. This amount is calculated as follows: \$2,489.52 x 12, divided by 365 days.
29. The Landlord collected a rent deposit of \$2,150.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$415.58 is owing to the Tenant for the period from September 29, 2012 to February 8, 2024.
30. 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.

Relief from eviction


31. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act.
32. This is a longstanding tenancy of 13 years and the Tenant resides at the property with his wife and child. His child will be graduating in June. The Tenant's representative indicated that the Tenant is requesting that eviction be postponed until August 2024 if the tenancy were to be terminated. In considering the circumstances, an extension of time based on the longstanding tenancy is appropriate in the circumstances however, an extension of six months is not since it would be unduly prejudicial to the Landlord.
33. The Tenant will be granted an extension of the standard termination to April 30, 2024.

It is ordered that:

34. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2024.
35. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
36. 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 May 1, 2024.
37. The Tenant shall pay to the Landlord \$12,604.47, which represents compensation for the use of the unit from September 8, 2023 to February 8, 2024, minus any rent the Tenant paid for this period.

38. The Tenant shall also pay the Landlord compensation of \$81.85 per day for the use of the unit starting February 9, 2024, until the date the Tenant moves out of the unit.
39. The Landlord owes \$2,565.68 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
40. The total amount the Tenant owes the Landlord is \$10,038.89 less any rent payments made to the Landlord by the Tenant.
41. If the Tenant does not pay the Landlord the full amount owing on or before April 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.

March 19, 2024
Date Issued



Kyle McGraw
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 November 1, 2024 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.