



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

Citation: Cho v Koo, 2024 ONLTB 84161

Date: 2024-11-28

File Number: LTB-L-063308-23

In the matter of: UPPER LEVEL, 105 SEAGRAVE CRES
SCARBOROUGH ON M1W3H6

Between: Chang Tao Cho

And

Annie X. J. Koo

I hereby certify this is a
true copy of an Order dated
Nov 28, 2024
Landlord and Tenant Board

Landlord

Tenant

Chang Tao Cho (the 'Landlord') applied for an order to terminate the tenancy and evict Annie X. J. Koo (the 'Tenant') because the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one (1) year.

This application was heard by videoconference on August 9, 2024, alongside LTB-L-063320-23. Both applications pertain to the same residential complex and the Landlord's genuine intention to move into the rental unit for the purpose of residential occupation for at least one (1) year. This order reflects the evidence and submissions provided by the applicant and this respondent.

By my oral direction at the hearing, the parties had until 5:00pm on August 16, 2024, to provide their written closing submissions to the Board. Only the Landlord abided by this oral direction.

The Landlord, the Landlord's Legal Representative, Berkan Altun, the Tenant, the Tenant's Legal Representative, George Brown and the Tenant's Support Person, Daniel Lee, attended the hearing. The Landlord was assisted by a Cantonese-English Interpreter, Jenny Zhang.

It is determined that:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must move out of the rental unit on or before January 31, 2025.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 19, 2023, the Landlord gave the Tenant an N12 Notice of Termination (hereafter referred to as the "N12 Notice") - which is deemed served on July 24, 2024 - with the termination date of February 17, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.
4. The Landlord met the requirements under section 72(1) of the *Residential Tenancies Act, 2006* (hereafter referred to as the "Act"), by filing with the Board a declaration signed by the Landlord stating that they require the rental unit for their own personal use, in good faith, for a period of no less than one year.

5. The Landlord has compensated the Tenant an amount equal to one (1) month's rent by February 17, 2024.

The Landlord's Own Use

6. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement pursuant to section 48 (1) of the Act, which states:

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;

(b) the landlord's spouse;

(c) a child or parent of the landlord or the landlord's spouse; or

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. [Emphasis added.]

7. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that they genuinely intends to move into the rental unit.
8. The courts have provided much guidance to the Board in interpreting the "good faith" and "genuine intent" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
9. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal."

10. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paragraph 27:

Once a landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard."

11. More recently, in *Fava v. Harrison, 2014 ONSC 3352 (CanLII)* the Divisional Court, in considering this issue in the context of the Act, found as follows:

“We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

12. In this matter, the Landlord testified that they, along with their spouse, reside in the basement of their niece’s home, which is described as being a 2-bedroom, and estimated to be around five hundred (500) square feet.
13. Indeed, the Landlord stated that, on August 31, 2023, they sold their previous residential accommodations (located at 305 Timberbank Boulevard) and proceeded to move in with their niece, as it appears on a copy of the Agreement of Purchase and Sale dated June 25, 2023 (Exhibit 1).
14. The Landlord entered into evidence pictures of their current residential accommodations, which depict the kitchen and dining room area they use as also located in the basement (Exhibit 2, *in bundle*).
15. The Landlord further provided pictures of their current bedroom, which they described as being cramped due to its limited size (Exhibit 3, *in bundle*).
16. The Landlord indicated that due to the sale of the previous accommodations on August 31, 2023, they were forced to place many of their personal belongings in storage, either within their niece’s home, or in alternate locations (Exhibit 4, *in bundle*).
17. Furthermore, the Landlord explained that their spouse practices tai chi and offers classes to members of their community, but due to the limited space they currently have access to at their niece’s home, they are unable to practise their preferred hobby.
18. The Landlord explained that they are therefore seeking to move into the rental unit as the Landlord and their spouse are seeking to live in their own private accommodations, and require additional space.
19. The Landlord indicated that they previously occupied the rental unit for close to twenty-five (25) years, and described the rental unit as being a 5-bedroom, with three (3) rooms located at the upper level, and two (2) rooms located in the basement. They estimate the residential complex to be around one thousand and eight hundred (1,800.00) square feet.
20. The Landlord testified that they intend to occupy the upper-level bedrooms for their day-to-day needs, and may use the additional rooms for use to host their family, or to temporarily accommodate their children when they visit them.
21. The Landlord also intends on using the basement as a living room for their personal use as exercise or dance space, but reiterated that they do not intend on using the rental unit for a commercial purpose. One of the basement rooms will be a guest room, while the other is intended to be used as a storage.

Previous N12 Notices of Termination Served by the Landlord

22. The Landlord indicated that they also served the Tenant occupying the basement unit of 105 Seagrave Crescent, with an N12 notice of Termination, which also stipulated that they intend to move into the basement unit as well, and occupy it at least for one (1) year, as they plan on personally occupying the entire residential complex as a single family home.
23. Pursuant to the N12 notice of Termination served to the basement unit tenant, the Landlord filed a corresponding application with the Board (LTB-L-063320-23).
24. The Landlord explained that they do not require any permits to turn the residential complex into a single-family home; and while it would not be their preference due to their intended plans for the use of both the upper-level unit and the basement, the Landlord indicated that if their applications related to the basement failed, they still intended to move into the rental unit.

The Landlord's Cross-examination

25. The Landlord confirmed that they rented the rental unit to the tenant as of the month of February 2023, and at that time, did not advise the Tenant of an intent to move into the rental unit or that they intended to sell their accommodations located at 305 Timberbank Boulevard.
26. The Landlord stated that they started receiving noise complaints relating to loud sounds and music emanating from the basement unit of the residential complex, as of the month of May 2023.
27. The Landlord explained that in order to try to mitigate the issues between the tenants of both the upper-level unit and the basement unit, they undertook to have multiple conversations with the tenants and asked them both to cooperate with one another.
28. The Landlord confirmed that they did not issue N5 Notices of Termination to either tenant but opined that “[they] did what [they] could do” in order for both tenants to be able to reasonable enjoy their respective residential accommodations.
29. The Landlord also indicated that they believe that they promptly addressed another concern raised by the Tenant, namely that the basement tenant allegedly blocked the access to the laundry room (which was intended to be a shared space within the residential complex) to the Tenant. The Landlord explained that they communicated with the basement tenant immediately, and that the Landlord personally unlocked the door (which was nailed shut) in order for the Tenant to once again be able to access and use the laundry facilities.
30. The Tenant entered into evidence multiple videos (DOC-2864672; DOC-2864760; DOC-2864797), which the Landlord recognized as being recordings sent by the Tenant to the Landlord in order to illustrate the prior noise complaints and the sounds emanating from the basement unit (Exhibit 5, *in bundle*).
31. The Landlord submitted that it had been more than a few months since a noise complaint was made to them by the Tenant, and that the dispute between the tenants of the residential complex was seemingly resolved.

32. While the Landlord recognized that disputes, such as noise complaints, are of the Landlord's responsibility to address, they reiterated that the sale of their previous residential accommodations on August 31, 2023, and their desire to have a larger space for their exclusive use, as being the sole reasons they served the Tenant with the N12 Notice.
33. The Landlord explained that they decided to sell their home located at 305 Timberbank Boulevard on or around the month of May 2023, as they no longer felt safe residing in that location. The home was located in close proximity to a street, which caused loud street noises to disturb the Landlord. Additionally, a car had crashed into their home.
34. The loud environment compounded with the safety concerns affected the Landlord's sleep quality, which led to them choosing to sell 305 Timberbank Boulevard.

The Tenant's Position

35. The Tenant indicated that they do not intend on disputing the validity of the N12 Notice, nor the fact that the Landlord, in good faith, requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one (1) year.
36. The Tenant, however, sought to have the Landlord's application dismissed pursuant to subsection 83(3) of the Act, as the Tenant alleges that the Landlord is in serious breach of their responsibilities under the Act and that the reason for the application being brought is that the Tenant has attempted to secure or enforce their legal rights.
37. The Tenant explained that they are a personal support worker, and moved into the rental unit on February 18, 2023.
38. The Tenant stated that their reasonable enjoyment of their rental unit started to be affected as of the month of May 2023, due to loud music and noises coming from their neighbour residing in the basement unit of the residential complex. The tenant communicated these disturbances, which would have occurred as early as 4:00am or as late as 11:00pm) to the Landlord, as it appears on copies of text messages sent by the Tenant to the Landlord between the months of July 2023, and January 2024 (Exhibit 6, *in bundle*).
39. The Tenant was advised by the Landlord that they would address the matter with the basement tenant, but the disturbances continued for close to ten (10) months.
40. The Tenant explained that due to the loud noises emanating from the basement unit, the Tenant's sleep quality was also affected, and even led to a diagnosis of insomnia, anxiety and depression, as it appears on a copy of medical note dated February 21, 2024 (Exhibit 7) The medical note advises the Tenant to take time off of work for a period of two (2) weeks. Under cross-examination, the Tenant indicated that their medication was not related to their sleep deprivation or insomnia. I note that the medical note is silent as to the cause of the Tenant's medical diagnosis.
41. The Tenant further explained that their depression diagnosis required them to be prescribed medication, as it appears on a picture of a prescription bottle (Exhibit 8).
42. The Tenant also submitted into evidence a medical note advising them to take time off for four weeks as of September 25, 2023, as it appears on a copy of the medical note dated September 25, 2023 (Exhibit 9). I note that the medical note does not provide a concrete

medical diagnosis, but is rather vaguely limited to describing the Tenant's condition as a "medical illness."

43. To try to cope with these noise issues, the Tenant would sometimes leave the rental unit to spend some time with their parents.
44. The Tenant explained that they were further interfered with as their basement neighbour would leave the door to the residential complex open, even in the wintertime, which would cause an increase in the Tenant's utilities costs, as it appears on the videos DOC-2864537 and DOC-2864468, (Exhibit 10, *in bundle*). The Tenant did, however, indicate that they did not personally see their basement neighbour purposefully leave the door to the residential complex open.
45. The Tenant also indicated that their basement neighbour unlawfully locked their access to the laundry facilities on May 18, 2023, as it appears on video DOC-2864438 (Exhibit 10), but agreed that that issue was resolved prior to the hearing date.
46. The Tenant described their relationship to the basement tenant as being improved and that they did not have any further music-related noise disturbances since the month of March 2024. They now also have unimpeded access to the laundry facilities.
47. The Tenant also confirmed that they never measured the decibel levels of the noise issues they previously referenced, and that they were not aware of any noise-related by-laws regulating such noise levels in a residential complex.
48. The Tenant explained that they are not particularly attached to their neighbourhood, but that their commute to work is estimated to be around a ten (10) minutes drive.
49. The Tenant started looking for alternate housing accommodations as of the month of June 2023, and believes they would need two (2) to (3) months to move out of the rental unit. They have not yet found rental accommodations that would be suitable to their budget and needs, which is why they have not yet moved out.

The Last Month's Rent Deposit

50. The Landlord collected a last month's rent deposit of \$2,600.00 from the Tenant and this deposit is still being held by the Landlord.
51. Interest on the rent deposit, in the amount of \$95.99 is owing to the Tenant for the period from February 18, 2023, to August 9, 2024.

Analysis

52. On the basis on the evidence and submissions before me, I am satisfied – on a balance of probabilities - that there is a genuine intention for the Landlord to move into the rental unit after the Tenant vacates the rental unit.
53. The Landlord provided a declaration, as required by the Act, and the Landlord provided credible and consistent testimony at the hearing regarding their intentions, namely that they intend to move out of the niece's basement, in order to move into the own private accommodations as they seek more privacy and more space to practise their bobbies and

to relocate their various belongings from multiple storage locations. I accept the truthfulness of the Landlord's testimony and their good faith intentions.

Relief From Eviction

54. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for their own residential occupation for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to deny the Landlord's application for eviction.
55. While the Tenant did not dispute the Landlord's genuine intention to move into the rental unit, they sought for the Board to deny the eviction pursuant to subsection 83(3) of the Act, which reads as follows:

83 (1) Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

(a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or

(b) order that the enforcement of the eviction order be postponed for a period of time.

[...]

83 (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

(b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

(d) the reason for the application being brought is that the tenant is a member of a tenants' association or is attempting to organize such an association; or

(e) the reason for the application being brought is that the rental unit is occupied by children and the occupation by the children does not constitute overcrowding. [Emphasis Added].

Serious Breach of the Landlord's Responsibilities: Subsection 83(3)(a) of the Act

56. In order to engage the mandatory refusal of eviction under subsection 83(3)(a) of the Act, the Landlord must be in serious breach of the Act, and that breach must be continuing at the

time of the hearing. This is confirmed by the use of the present tense by the legislature. This is further confirmed by *Puterbough v. Canada (Public Works & Government Services)*, 2007 CarswellOnt 2222, which states at paragraph 28 that:

The wording [...] makes it clear that the landlord must be in serious breach of its responsibilities *at the time of the hearing*. This subsection is not triggered by the landlord having been in serious breach of responsibilities at some point in the past. Nor is it triggered by the potential as of the date of the hearing that the landlord will be in serious breach at some time in the future.

57. In this case, the Tenant indicated that the Landlord substantially interfered with their reasonable enjoyment of the rental unit or complex as they failed to take the necessary measures to address their noise complaints.
58. Although I agree with the Tenant that hearing loud music and noises from another unit at late hours of the night, or very early in the morning, can be bothersome, I do not find that the behaviour the tenant complains of as being a “serious” breach within the meaning of subsection 83(3)(a). I say this because if the Legislature had intended for every breach of the Act to mandatorily disentitle a landlord from evicting a tenant, the word “serious” would not have been used. In other words, to result in mandatory relief from eviction the breach complained of must be sufficiently egregious that refusal of a landlord’s basic right to access the eviction process under the Act is a reasonable result. In my view, the breach complained of here does not rise to that level, even if the noises created by the basement tenant were to be beyond the scope of “everyday noises” that is to be expected in the context of a communal living area, such as a residential complex and the Tenant provided no evidence to demonstrate that it rose to the level of serious as contemplated by the Act.
59. Additionally, the Tenant confirmed that they had not had any music or noise-related issues emanating from the basement tenant since the month of March 2024. Accordingly, even if the allegation made by the Tenant in relation to the noise issues were ‘serious’, I am not satisfied that they would constitute a continuing breach of the Act, as a period of at least five (5) months has elapsed since the last noise complaint.

The Landlord Served the N12 in Retaliation of the Tenant attempting to Secure or Enforce their Legal Rights: Subsection 83(3)(c) of the Act

60. The Tenant also sought to have the Board to deny the eviction as they believe the Landlord served them the N12 Notice as a result of the numerous complaints they lodged with the Landlord in regard to the basement tenant’s behaviour, and they believe that the Landlord seeks to reclaim the rental unit as their single-family home, rather than resolving the conflicts and disputes between the tenants currently residing in the residential complex.
61. While it is undisputed that the tenants of the residential complex had an acrimonious relationship – until at least the month of March 2024 - I am not satisfied that the Landlord served the N12 Notice in retaliation; in hopes of no longer receiving complaints from the Tenant, nor in hopes of not having to deal with the disputes between the tenants.
62. Indeed, the Landlord explained that they sold their previous home and sought to move out of their current accommodations in order to benefit from a larger space that would provide them more privacy and allow them to practise their hobbies.

63. The Landlord listed their previous home for sale during the month of May 2023, and proceeded to sign an Agreement of Purchase and Sale on June 25, 2023, with a closing date of August 31, 2023. While the Tenant may have had concerns and complaints during the same time period, I find that it is more likely than not that the Landlord served the Tenant with the N12 Notice once their plans relating to the sale of their home materialized and the catalyst to serving the N12 Notice was their genuine intent to move into the rental unit and not prolong their stay at their niece's home.

Postponement of the Eviction

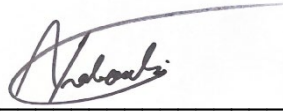
64. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would not be unfair to postpone the eviction until January 31, 2025, pursuant to subsection 83(1)(b) of the Act.
65. While the Tenant referenced various medical conditions and submitted medical notes for the Board to consider; these documents either did not provide an adequate description of the diagnosis (Exhibit 9), or did not clarify the effect of any such a diagnosis on the Tenant's ability to move (Exhibit 7), or when – in the opinion of a medical professional, the Tenant would be able to move (by analogy see *Wang v. Oloo, 2023 ONSC 1028*).
66. The delayed eviction date will provide the Tenant with additional time to continue searching for alternate housing accommodations and proceed to move without the burden of an expedited time constraint.
67. While it may not be their preferred locale, the prejudice to the Landlord is minimized as the extension is not prolonged and they currently have secured housing accommodations.

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 January 31, 2025.
2. If the unit is not vacated on or before January 31, 2025, then starting February 1, 2025, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. The Landlord shall apply the amount held as a last month's rent deposit towards the rent for the rental period starting January 1, 2025, and ending January 31, 2025.
4. The Landlord owes the Tenant \$95.99, which is the amount of the interest on the last month's rent deposit.

5. 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 February 1, 2025.

November 28, 2024
Date Issued



Alexandre Traboulsi
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, 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.