Order under Section 69
Residential Tenancies Act, 2006

File Number: LTB-L-013925-24

In the matter of: 269B HADDINGTON AVE
NORTH YORK ON M5M2R2

Between: Jing Zhang — Landlord

And

Gillian Weinrib — Tenant

I hereby certify this is a true copy of an Order dated
SEP 11, 2024
Landlord and Tenant Board

Jing Zhang (the 'Landlord') applied for an order to terminate the tenancy and evict Gillian Weinrib (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 3, 2024.

The Landlord, the Landlord's representative C. Hu ("LLR"), the Tenant and the Tenant's representative S. Hedeen ("TTR") attended the hearing.

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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 14, 2024, the Landlord gave the Tenant an N12 notice of termination deemed served on February 19, 2024 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 by the Landlord, his spouse and his child.
4. The Landlord filed a declaration with the L2 application pursuant to s. s.71.1 of the Residential Tenancies Act ("RTA") signed by the Landlord.
5. The Landlord paid the compensation required by s. 48.1 of the RTA prior to the termination date of April 30, 2024. This was not disputed by the Tenant.
6. 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 year.

7. The Landlord and his family lived in China when the N12 notice was served. The Landlord stated that he wished to move to Canada with his family as his daughter had applied to attend the University of Toronto and he wished to have his 14 year old son attend high school in Ontario as well. The decision was made to move and live in the rental unit. The Landlord filed a document confirming that his daughter had been granted a place at U of T and that his son had registered for enrollment at the John Polanyi Collegiate Institute. The Landlord stated that this high school was located with 1 km of the rental unit. He stated that these education programs would last for 4 years and that he intended to live in the rental unit with his family for at least that period. The TTR suggested that these documents confirmed acceptance of applications, not actual enrollments or complete registrations. While that is correct on the face of the documents, I accept these documents as corroborative of the Landlord's stated intentions and explanation for his family's move to Canada. The LLR also introduced copies of air travel confirmations of the Landlord's flights from China to Toronto on August 20, 2024, in anticipation of the hearing of this application on September 3, 2024 and the commencement of the school year. The Landlord stated that his family was living in AirBnb accommodations pending the outcome of the hearing.

8. On cross-examination, the Landlord was asked about a previous attempt to sell the rental unit. The Landlord acknowledged a listing in 2022 and that the rental unit remained on the market until November, 2023. The Landlord stated that the property was taken off the market when the family made their plans to move to the rental unit so his children could continue their education in Ontario. I accept this explanation and find that while the rental unit was for sale, once the Landlord made the decision to live in the rental unit, any intention of selling ceased.

9. The TTR also asked questions about prior litigation between the Landlord and the Tenant in Superior Court concerning the rental unit dating back to 2022. No documents relating to this litigation were provided by the TTR. The Landlord stated that proceedings were commenced in Superior Court as the Tenant's arrears of rent at that time exceeded the Board's monetary jurisdiction. He stated he believed that the litigation was settled in 2022.

10. The Landlord also stated that he was aware of the Tenant's T2 and T6 applications also initiated in 2022. He stated that these applications were entirely unrelated to his decision to move to the rental unit with his family and that the determining event for this decision was his daughter's offer of a place at U of T.

11. The Tenant stated that she believed the Superior Court litigation with the Landlord was ongoing but that it was "at a standstill". No documents relating to those proceedings were presented by the Tenant and I find her evidence concerning those proceedings to be vague, inconsistent and uninformative on issues to be considered on this application.

12. The Tenant acknowledged that she stopped paying rent in May 2024. She stated that this was because of maintenance issues. She said there was water leaking into the unit and the back door could not open and water was puddling at the back door. She said she had other maintenance concerns but that the most serious were the difficulty opening the front and back door, difficulties with the locks, a leak she had to repair in the refrigerator and that the fire detectors did not work. She said she spent thousands of dollars fixing things in the expectation of reimbursement she says was promised by the Landlord's property manager but never paid.

13. The Tenant stated that she always intended to pay rent accruing since May,2024 into the Board but had not done so. The TTR stated the payment in should be made within a week.

14. The Tenant submitted no documents such as photographs, videos, repair estimates, invoices or receipts with respect to any of the maintenance issues she mentioned. On re-direct examination, she stated that there is a hearing on her T2 and T6 applications LTB-T 037377-22 on November 24, 2024. She stated that some maintenance issues have been ongoing since the T6 application was initiated in 2022 and some have arisen since, without giving any other details.

15. She stated that there was a case conference in July, 2024 regarding her T6 application, adjourned on consent of the parties. She was vague as to the issues discussed and said she believes there is a letter threatening the Landlord with a fine over the fire alarm system. No such letter was presented in her evidence.

16. 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,
>
> 1. a landlord;
>
> 2. the landlord's spouse;
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> 3. a child or parent of the landlord or the landlord's spouse; or
>
> 4. 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.

17. 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 the Landlord genuinely intends to move into the rental unit.

18. 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.

19. 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".

20. *In Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

> In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.
>
> While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.
>
> Once the 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.

21. 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.”

22. I have considered all of the evidence presented at the hearing and all of the oral testimony, and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

23. In this case, the Landlord testified that he intends to live in the rental unit for at least a one year period so that his children can receive their education in Ontario.

24. Based on the evidence and submissions before me, I am satisfied that the Landlord genuinely intends to move into the rental unit with his family after the Tenant vacates the unit.

25. The Landlord provided corroborative documents concerning the education plans for his children and has moved to Canada in time for them to commence their respective programs in September. This evidence was not shaken on cross-examination. I am satisfied that the Landlord has abandoned his intentions to sell

the rental unit at least until his children complete their education and I do not find that the prior listing of the home to be inconsistent with the Landlord's genuine intention to move into the rental unit.

26. Therefore, I find that the Landlord does in good faith require possession of the rental unit for the purpose of his own and his family's residential occupation for a period of at least one year.

27. The TTR suggested that the reason for the N12 is that the tenant has attempted to secure or enforce his or her legal rights and that there was a serious breach of the Landlord's maintenance obligations. As to the suggestion of retaliation, the N12 was not served until over a year had passed from the initiation of the Tenant's T2 and T6 applications and I do not believe that the Landlord arranged for his children's acceptance at local schools and moved his family from China to Toronto as a ploy to support a retaliatory N12 application. The evidence provided was not sufficient to establish that the sole or primary reason for the Landlord bring this application was that the Tenant has attempted to secure or enforce her legal rights: see *MacNeil v. 976445 Ontario Ltd.,* 2005 CarswellOnt 10528; [2005] OJ No 6362 (Div. Ct.), para 26. I find that the sole or primary purpose for the Landlord's bringing this application is his genuine intention to occupy the unit.

28. The Tenant's evidence relating to maintenance was vague and unsupported by any documents and I also find that, even if I accepted the unsubstantiated allegations of the Tenant, that the maintenance issues she described are not serious breaches within the meaning of s. 83(3)(a) of the Act.

29. With respect to relief from eviction, I have considered all of the disclosed circumstances of both parties 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 September 30, 2024 pursuant to subsection 83(1)(b) of the Act.

30. The Landlord is currently living in temporary AirBnB accommodation with his family.

31. The Tenant stated she is employed as a teacher. She stated that her adult sons live with her on a part time basis. The eldest, 22, suffers from panic attacks and the youngest, 21, suffers from anxiety. She said it was important to minimize any changes or disruptions in their living pattern. She said both attend school and have residences near their schools in which they live part time and that they spend part of their time living with her in the rental unit. She stated that since she received the N12 notice in February 2024 she "did look around" but gave no details as to her search for potential alternate accommodation. She did not make any suggestion as to issues with the affordability of alternate accommodation. The Tenant expressed no concerns as to her personal situation other than a reluctance to move. Her children are adults and live with her on a part time basis in any event.

32. 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 September 30, 2024 pursuant to subsection 83(1)(b) of the Act.

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 September 30, 2024.
2. If the unit is not vacated on or before September 30, 2024, then starting October 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 October 1, 2024.
4. The Tenant shall also pay the Landlord compensation of $175.04 per day for the use of the unit starting October 1, 2024 until the date the Tenant moves out of the unit.

September 11, 2024
Date Issued

Jack Jamieson
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 23, 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.