



Order under Section 69 Residential Tenancies Act, 2006

Citation: Kochman v Hong Chan, 2025 ONLTB 21966

Date: 2025-03-24

File Number: LTB-L-079851-24

In the matter of: Basement Room 2, 43 TREMONT RD
Toronto ON M9B3X3

Between: Andrij Kochman

And

Frederick Yiu Hong Chan

I hereby certify this is a
true copy of an Order dated

MAR 24, 2025

Landlord and Tenant Board

Landlord

Tenant

Andrij Kochman (the 'Landlord') applied for an order to terminate the tenancy and evict Frederick Yiu Hong Chan (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 11, 2025.

The Landlord, Andri Kochman and the Tenant, Frederick Yiu Hong Chan and the Tenant's Witness, Hasan Metovic (HM) 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/or the claim for compensation in the application. Therefore, the tenancy between the Landlord and the Tenant is terminated and the Tenant must move out of the rental unit on or before April 4, 2025.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On June 29, 2024, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by himself and his family.
4. In support of this application, the Landlord filed a declaration signed by the Landlord which complies with the requirements of section 72(1) of the Act.

Evidence of the Landlord

5. The Landlord, Andrij Kochman testified that he and his spouse and their two children reside in the main floor of the rental unit. He testified that he and his wife welcomed a new baby on April 27, 2024 and as such, he is requiring further space for his growing family.
6. The Landlord testified that he has been working remotely since 2018 and that when their baby was born, his office was turned into a nursery. The Landlord must now work from his dining room table which is not ideal when a toddler is running around. The Landlord requires the basement unit to install a home office and a playroom for his children.
7. The Landlord explained that there are four rooms in the basement unit and two of them are rented out, one to the Tenant, Frederick Yiu Hong Chan and one to another tenant, Hasan Metovic. He further explained that two of the rooms are used for storage which is why there are only two current tenants.
8. The Landlord testified that he attempted to reason with the Tenant about his requirement of the basement unit. Neither the Landlord or his wife would be comfortable with two men residing in the basement where their children would be playing in a playroom. Further, the Landlord would require privacy in his office for employment purposes.
9. The Landlord also stated that he provided an N12 to the other tenant, Hasan Metovic with a termination date of August 31, 2024.
10. Finally, the Landlord testified that he paid \$485.75 in compensation to the Tenant on May 31, 2024.

Evidence of the Tenant

11. The Tenant, Frederick Yiu Hong Chan testified that he has been residing in the basement unit since December of 2016 and that it is an affordable place for him to live.
12. The Tenant testified that the Landlord should simply use the two spare rooms in the basement as his office and playroom. The Tenant further stated that the Landlord has the whole main floor for his family and that there is no reason that he and the other tenant should have their tenancies terminated. He stated that he and the other tenant were "good people" and that the Landlord should not worry about installing a playroom and an office in the spare rooms downstairs while his tenancy continued.
13. The Tenant complained that the Landlord would not allow him to pay his rent by money order and insisted on cash or certified cheque. He then stated that the Landlord failed to put salt on the driveway and walkway of the rental unit and the Tenant fell on January 19, 2025. He stated that his right arm was broken and that if he had to move out of the rental unit, he would not be able to carry boxes.
14. I explained to the Tenant that the only matter that we are dealing with today is whether or not the Landlord is intending to utilize the basement unit for his family in good faith.
15. The Tenant did not provide any details or evidence beyond his own testimony to suggest that the Landlord was acting in bad faith and was not planning on using the basement unit. However, the Tenant maintained that the Landlord was not taking these actions in good faith and the Tenant felt that the Landlord was not being reasonable.

Evidence of HM

16. HM is the tenant who resides in Room 1 of the basement unit and shares the common areas with Frederick You Hong Chan. HM testified that he too felt that the Landlord was not acting in good faith and that his tenancy should not be terminated. HM stated that the Landlord should use the other two rooms in the basement for the playroom and his office. HM did not provide any details or evidence beyond his own testimony to suggest that the Landlord was acting in bad faith and was not planning on using the basement unit.

Analysis and Application of the Law

17. On an application before the Board, the person who seeks an order terminating the tenancy has the burden of leading sufficient evidence to establish that i) the technical requirements of the Act have been met, and ii) it is more likely than not that their version of events is true. In this case, the burden falls on the Landlord.
18. The N12 notice served pursuant to subsection 48(1)(a) of the Act allows a landlord to give a notice of termination if the landlord requires possession of the rental unit for the purpose of residential occupation for at least one year.
19. In making its determinations under section 48, the Board must also consider the good faith intent of the applicants. Under section 72 of the Act, the Board cannot terminate a tenancy and evict the tenant unless the landlords have satisfied that they are proceeding in good faith.
20. Subsection 202(1) of the Act states: "In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants, and in doing so... may have regard to the pattern of activities relating to the residential complex or the rental unit.
21. All parties testified in a straight-forward manner.
22. The Landlord's application to terminate the Tenant's tenancy is reasonable and understandable in the circumstances. The Landlord requires space for his growing family and now requires a separate office.
23. Although the Tenant made allegations about the Landlord's apparent failure to accept cheques or money orders and the Landlord's apparent failure to apply salt during the winter, the Tenant did not provide any reasons why they thought that the Landlord would not use the basement unit for his family. The Tenant's allegations may be brought forward in a tenant application if the Tenant chooses to do so but these allegations are not considered in this test of the Landlord's good faith.
24. HM made allegations of bad faith as against the Landlord but did not provide any reasons why they thought the Landlord would not use the basement unit for his family.
25. Based on the evidence and submissions provided, I am satisfied that the N12 Notice was given in good faith and that the Landlord has a good faith intention to reside in the rental unit for the purpose of residential occupation. Accordingly, I find that the requirements set out in subsection 48(1) of the Act have been met.

26. The Landlord compensated the Tenant in an amount equal to one month's rent prior to the termination date.

Daily Compensation and Rent Deposit

27. It is undisputed that this is a month-to-month tenancy with a monthly rent of \$485.75 which is to be paid on the 1st of every month. The Tenant remains in possession of the rental unit.

28. The Tenant was required to pay the Landlord \$2,619.08 in daily compensation for use and occupation of the rental unit for the period from September 1, 2024 to February 11, 2025.

29. Based on the Monthly rent, the daily compensation is \$15.97. This amount is calculated as follows: \$485.75 x 12, divided by 365 days.

30. The Landlord collected a rent deposit of \$450.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$62.57 is owing to the Tenant for the period from December 15, 2016 to February 11, 2025.

31. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Section 83 – Mandatory Refusal of Eviction

32. The Tenant alluded in his testimony that the Landlord was in serious breach of his obligations under the Act. The Tenant only provided one incident where he fell in the driveway but did not provide any serious ongoing maintenance issues.

33. 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. There was insufficient evidence provided by the Tenant with respect to the one incident mentioned and whether or not there were other ongoing breaches and if the Landlord was notified of the alleged breaches. Accordingly, I find that section 83(3) of the Act was not triggered. Therefore, I am not required to refuse to grant the application.

Section 83 – Relief from Eviction

34. The Landlord requested a standard 11-day eviction order.

35. The Tenant stated that due to his broken arm, he would not be able to move his possessions out of his room. He further stated that with the Toronto housing crisis, it would be very difficult to find another room that he could afford to rent. It is a fact that the Tenant has had an additional 7 months in the rental unit after the termination date and he does not appear to have seriously looked for another rental unit during this period of time.

36. Based on the submissions provided by the Tenant, I am not satisfied that the Tenant's issues warrant denying eviction or warrant delaying eviction.

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 April 4, 2025.
2. If the unit is not vacated on or before April 4, 2025, then starting April 5, 2025, 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 April 5, 2025.
4. If the unit is not vacated on or before April 4, 2025, the Tenant shall pay the Landlord compensation of \$15.97 per day for the use of the rental unit until the date the Tenant vacates the rental unit.
5. The Tenant shall pay to the Landlord \$2,619.08, which represents compensation for the use of the unit from September 1, 2024 to February 11, 2025 less any rent paid by the Tenant during that period.
6. The Landlord owes \$512.57 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.
7. If the Tenant does not pay the Landlord the full amount owing on or before April 4, 2025, the Tenant will start to owe interest. This will be simple interest calculated from April 5, 2025 at 5.00% annually on the balance outstanding.

March 24, 2025
Date Issued

Carrie Bertrand

Carrie Bertrand
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 October 5, 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.