



AMENDED ORDER
Order under Section 69 / 88.2
Residential Tenancies Act, 2006
and Section 21.1 of the Statutory Powers Procedure Act

Citation: Cherrington v Washington, 2024 ONLTB 30937

Date: 2024-05-17

File Number: LTB-L-094720-23-AM

In the matter of: Mainfloor, 527 DREW ST
OSHAWA ON L1H5B9

Between: Marlene Cherrington

And

Candace Nicole Washington

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

MAY 17, 2024

Landlord and Tenant Board

Landlord

Tenant

Marlene Cherrington (the 'Landlord') applied for an order to terminate the tenancy and evict Candace Nicole Washington (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.

This amended order is issued to correct a clerical error in the original order issued on May 3, 2024.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

Marlene Cherrington (the 'Landlord') also applied for an order requiring Candace Nicole Washington (the 'Tenant') to pay the Landlord's reasonable out-of-pocket expenses that are the result of the Tenant's failure to pay utility costs they were required to pay under the terms of the tenancy agreement.

This application was heard by videoconference on April 22, 2024.

The Landlord and the Tenant attended the hearing.

The tenant declined the assistance of Tenant Duty Counsel advising they had already spoken with a lawyer.

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 is terminated on May 31, 2024 2023.**

2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On November 30, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of January 31, 2024. The Landlord claims that in good faith, she requires vacant possession of the rental unit for the purpose of residential occupation by herself for a period of at least one year.

The Landlord's Good Faith

4. Section 48(1)(a) of the Act allows the Landlord to terminate a tenancy where the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by the Landlord for a period of at least one year. The onus is on the landlord to establish that she in good faith requires the rental unit for the purpose of residential occupation.
5. The test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal: *Slater v. Belijinac* [2001] O.J. No. 2792 (Div. Ct).
6. The residential complex contains two units and the Landlord is currently living in the unit above the Tenant.
7. The Landlord submits her intention is to take over the entire house.
8. It is uncontested that recent by-law and Fire Code inspections of the house have found that it cannot be used as a 2-family dwelling and the Landlord is in violation of municipal by-laws. She has been told the upstairs unit is a violation of fire code regulations due to hoarding and illegal cooking facilities. While there is a full kitchen downstairs, the Landlord uses only a toaster oven upstairs. The Tenant does not dispute this.
9. The Landlord also testified that her mother's dementia is now severe, and she needs personal care. She intends to bring her mother to live with her. The Tenant questions why the Landlord has not provided proof of her mother's illness, and speculates she is probably not telling the truth.
10. The Landlord testified she is in a desperate financial situation because the Tenant has not paid rent since October. She has borrowed money to pay her mortgage, has not paid utilities in several months and ODSP has cut off the majority of her entitlement due to the presence of the Tenant in the house. She provided evidence that her income is \$198 per month. With the requirement to return her house to one single family dwelling, she claims her need is urgent.
11. The Tenant challenged Ms. Cherrington's intention to move into the rental unit but doesn't think the Landlord will rent the unit out again because of her financial issues. She suspects the Landlord will be sneaky about renting the unit out. She feels the intention is not genuine because the Landlord just wants her out and this is the fastest way to evict her. The Tenant does not dispute the Landlord's need to merge the two units into one single family dwelling, other than speculation that she may rent it out again in some way.
12. It is undisputed the parties have had an extremely acrimonious relationship since the first day of the tenancy.

13. The Landlord was consistent and unwavering in her evidence that she intends to take over the entire house. The Tenant acknowledged the Landlord's financial situation, the fact that she has paid no rent since her first and last month's rent were paid on her behalf, and the pressing requirement to merge the upstairs and downstairs units. I find the Tenant's reasons why the Landlord may not rent to be speculative and unsupported by the evidence. Therefore, I find that the Landlord has met her onus and proven on a balance of probabilities that she, in good faith requires possession of the rental unit for the purpose of her own residential occupation for a period of at least one year.

Compensation

14. The Landlord testified she compensated the Tenant an amount equal to one month's rent by providing a letter to the Tenant waiving the rent for October 2023, which she placed in the Tenant's mailbox on January 25, 2024. She produced a photo of herself placing the letter into the mailbox.
15. The Tenant denies receiving the Landlord's letter waiving the rent.
16. The parties agree that the Tenant has not paid rent since September 2023 and arrears of rent are owing.
17. I am satisfied that the Landlord did serve the letter with the rent waiver on January 25, 2024. As a result, compensation equal to one month's rent was properly provided to the Tenant according to sections 48.1 and 55.1 of the Act.

Daily compensation & rent deposit.

18. The Tenant was required to pay the Landlord \$4,987.24 in daily compensation for use and occupation of the rental unit for the period from February 1, 2024, to April 22, 2024.
19. Based on the monthly rent, the daily compensation is \$60.82. This amount is calculated as follows: $\$1,850.00 \times 12$, divided by 365 days.
20. The Landlord collected a rent deposit of \$1,850.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$32.06 is owing to the Tenant for the period from August 14, 2023, to April 22, 2024.
21. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

Compensation for unpaid utilities

22. The Tenant disputed the lease requires her to pay utilities. The Landlord presented her copy of the tenancy agreement at the hearing, which showed the Tenant is required to pay 50% of the heat, electricity, and water each month. Although the Tenant disputed the charges, she agreed her copy of the tenancy agreement also contained the same obligation. I am satisfied the tenancy agreement requires the Tenant to pay 50% of utilities and that the Tenant did not pay these amounts.
23. The Landlord has proven that the Tenant failed to pay 50% of the heat, electricity, and water costs that she was required to pay under the terms of the tenancy agreement.

24. The Tenant disputed the water heater and HVAC rental cost and the AC cooling plan appearing as 'total charges from other companies' on the Enbridge bills. Section 2 of the Act defines 'utilities' as heat, electricity, and water, therefore I find the Tenant does not owe the costs from these other companies.
25. The Landlord submitted evidence by way of outstanding utility bills showing that she has incurred reasonable out-of-pocket expenses of \$1155.48 as a result of the Tenant's failure to pay heat, electricity and/or water costs as follows:

Gas	Sept 12, 2023 – March 12, 2024	\$100.00*7*50%	\$350.00
Electricity	Sept 20, 2023 to March 15, 2024	\$595.60*50%	\$297.80
Water	Sept 1, 2023 to March 13, 2024	\$1015.36*50%	\$507.68
		Total	\$1155.48

Relief from Eviction

26. I have considered all 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 May 30, 2024, pursuant to subsection 83(1)(b) of the Act.
27. The Tenant testified that since she moved in the Landlord has been trying to evict her which has caused turmoil on a daily basis. She submitted one daughter has suffered from depression as result of the turmoil. Another daughter has cerebral palsy, is in constant therapy and is deaf in one ear. The Tenant is self-employed and works from home, and with that work, plus her daughters' health care appointments it is challenging looking for a new place to live. The Tenant agreed that she did not want to live in the rental unit any longer but needs a couple of months to move.
28. Having considered both the Tenant's circumstances and Ms. Cherrington's urgent financial situation and need to re-amalgamate the two units, I find it appropriate to postpone eviction until May 30, 2024.

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 May 30, 2024.
2. If the unit is not vacated on or before May 30, 2024, then starting June 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 May 22, 2024.
4. The Tenant shall pay to the Landlord \$4,987.24, which represents compensation for the use of the unit from February 1, 2024, to April 22, 2024.
5. The Tenant shall also pay to the Landlord \$1,155.48, which represents the reasonable out-of-pocket expenses the Landlord has incurred or will incur as a result of the unpaid utility costs.

6. The Landlord owes \$1,882.06 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. The total amount the Tenant owes the Landlord is \$4,260.66. .
8. The Tenant shall also pay the Landlord compensation of \$60.82 per day for the use of the unit starting April 23, 2024, until the date the Tenant moves out of the unit.
9. If the Tenant does not pay the Landlord the full amount owing on or before May 30, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.

May 3, 2024
Date Issued



Julie Broderick
Member, Landlord and Tenant Board

May 17, 2024
Date Amended

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 22, 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.