



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

Citation: Khan v Muhammad, 2024 ONLTB 93839

Date: 2024-12-19

File Number: LTB-L-003557-23

In the matter of: 907, 21 OVERLEA BLVD
SCARBOROUGH ON M4H1P2

Between: Asif Ali Khan
Kareem Khan

And

Ilyas Muhammad
Sara Naz

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

Landlords

Tenant

Asif Ali Khan and Kareem Khan (the 'Landlord') applied for an order to terminate the tenancy and evict Ilyas Muhammad and Sara Naz (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 application was heard by videoconference on October 31, 2024.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Shahid Maqbool Mirza. The Tenant was represented by Rajan Mahavalirajan.

It is determined that:

1. On January 6, 2023, the Landlords gave the Tenant an N12 notice of termination the termination date of March 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for their own use
2. As explained below, the Landlords have not proven on a balance of probabilities the grounds for termination of the tenancy the claim for compensation in the application. Therefore, the application is dismissed.

Landlords' Position

3. The Landlord, Asif Khan, resides in Illinois, where he operates a pharmacy and lives with his wife and children. His mother, Kareem Khan, is 82 years old and resides in a nursing home in the United States due to health concerns, including a fractured hip, glaucoma, and memory issues.
4. The Landlords submit that his KK prefers to continue her medical treatment in Toronto and that AK is going to move to Toronto to care for her.

Tenants' Position

5. The Tenants have occupied the rental unit since 2012 and have consistently paid rent, albeit with some arrears related to a prior Board order and an ongoing payment plan.
6. The Tenants raised concerns about the Landlord's intent, alleging that the Landlords sought to evict them to increase the rent or sell the property. The Tenants argued that the application was retaliatory, citing a T6 application they filed concerning maintenance issues.

Analysis

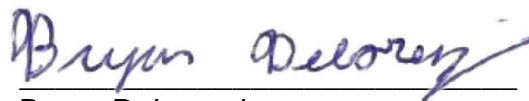
7. The main issue to be determined is whether the Landlord has established that they in good faith require possession of the rental unit for the purpose of residential occupation as required by s.48(1) of the *Residential Tenancies Act*, 2006.
8. Section 48 has been interpreted by the Courts as requiring only that a landlord establish that they genuinely intend to move into the unit and live there for residential purposes for at least one year (*Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No. 2049 (Div. Ct.)). Neither the reasonableness of the Landlords' intention, nor the fact that the Landlords may have other motives for wanting to occupy the unit, nor the fact that there might be other available alternatives is the issue (*Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.), and *Feeney v. Noble*). However, the surrounding circumstances may provide circumstantial evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists (*Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct.)).
9. Having regard to the relevant circumstances, I am not convinced either Landlord has a genuine intent to reside in the rental unit.
10. This is the Landlords' application. Therefore, the Landlords bear the burden of proof that they genuinely intend to occupy the rental unit. There was no declaration or affidavit from KK. Without KK testifying at the hearing, it is difficult for the Board to determine her genuine intention to occupy the rental unit.
11. AK's testimony lacked specificity and consistency. While he stated that he intended to move to Toronto to care for his mother, he also admitted that he would continue operating his business in Illinois and that his wife and children would remain there. I find This raises questions about the feasibility of his plan to relocate full-time. The Divisional Court has concluded occasional or infrequent use of the rental unit does not constitute residential occupation. (see *Kohen v. Warner*, 2018 ONSC 3865)
12. I am also skeptical of the Landlords need for rental unit. KK already resides in resides in a nursing home. It seems unlikely that a person in a nursing home with fractured hip, glaucoma, and memory issues would likely be able to live independently.
13. Further, no evidence was provided to demonstrate an immediate and pressing need for the Landlords. to occupy the unit, such as medical records or detailed plans for the transition.

14. In my view, it would be reasonable for the Landlords to provide the Board medical documentation that supports the claims of KK's medical need for the rental unit. I find this especially true given KK's absence from the hearing.
15. I also have regard for the Tenants' arguments that the application is retaliation for the Tenants asserting their rights. The Tenants testified that a real estate agent, allegedly hired by the Landlords, visited the property, and indicated it was being prepared for sale. AK acknowledged the real estate visited the rental unit, stating that the individual was a cousin helping with maintenance.
16. AK also admitted to requesting a rent increase during an earlier visit but denied making any formal attempts to raise the rent outside of Act.
17. I do not accept the AK's explanations. Rather, I prefer the Tenants' version of events. The Tenants live at the rental unit and have a firsthand account of the interactions with the real estate agent.
18. Furthermore, the Landlord's acknowledgement that they intended to seek higher rent supports the Tenants' claim the Landlord facing rising costs and potential maintenance claims served an N12 notice to terminate the tenancy.
19. For the foregoing reasons, I do not find the N12 was given in good faith. Therefore, the Landlords' application is dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

December 19, 2024
Date Issued



Bryan Delorenzi
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.