



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

**Citation:** Mcclement v Russell, 2023 ONLTB 55919

**Date:** 2023-08-11

**File Number:** LTB-L-032840-22

**In the matter of:** BOX 696 123 Arthur Street East  
THORNBURY ON N0H2P0

**Between:** Richard Mcclement and Joan Fitzgerald

**And**

Amber Russell and Steve Pifer

I hereby certify this is a  
true copy of an Order dated  
**Aug-11, 2023**  
Landlord and Tenant Board

Landlords

Tenants

Richard Mcclement and Joan Fitzgerald (the 'Landlords') applied for an order to terminate the tenancy and evict Amber Russell and Steve Pifer (the 'Tenants') because

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on May 29, 2023 at 9:00 a.m.

Only the Landlords, represented by Errol Treslan, Lawyer, attended the hearing.

As of 9:50 a.m., the Tenants was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlords' evidence.

**Determinations:**


1. This is application is based on a N12 Notice of Termination - Notice to End your Tenancy Because the Landlord, a Purchaser or a Family Member Requires the Rental (the "N12 Notice")
2. The N12 Notice had a termination date of July 31, 2022.
3. The Landlords submitted a "Declaration " dated June 8, 2022 that states 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 year.
4. The Landlords submitted a copy of a "Self-Employed Support Staff Agreement" (the "Agreement") which sets out the terms and conditions of employment and the living arrangements between the Landlords and Tenants.
5. The Agreement states the following:
  - I. The employment arrangement is to provide care for the Landlord's daughter

- II. The Landlords will provide accommodation to the Tenants as part of the employment agreement
  - III. The Landlord's daughter will live in the lower portion of the house
  - IV. The Tenants will live in the upper portion of the house
  - V. The laundry room, which is located downstairs, was considered a shared space
  - VI. The kitchen, which is located on the upper portion of the house is to be considered a shared space between the Tenants and the Landlord's daughter, including access to any food in the kitchen and the cooking appliances.
  - VII. The Tenants are responsible for food preparation for the Landlord's daughter
  - VIII. The Tenants would be provided with an allowance of \$200.00 for the purchase of food
6. The Landlord's representative submitted that although the Landlord has served the Tenants with the required N12 Notice, the tenancy between Landlords and Tenants is exempt from the Residential Tenancies Act, 2006 (the "Act") pursuant to Section 5(1) of the Act which states the following;
- "This Act does not apply with respect to,*
- living accommodation whose occupant or occupants are required to share a bathroom or kitchen facility with the owner, the owner's spouse, child or parent or the spouse's child or parent, and where the owner, spouse, child or parent lives in the building in which the living accommodation is located;"*
7. In this case uncontested submissions support that the kitchen is shared by the Tenants and the owners' child and that the Act does not apply.

**It is ordered that:**

- 1. The Landlord's application is dismissed

**August 11, 2023**  
**Date Issued**

  
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Peter Pavlovic  
Member, Landlord and Tenant Board

15 Grosvenor St, 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.