



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

**Citation:** Polack v Walker, 2023 ONLTB 59200

**Date:** 2023-10-10

**File Number:** LTB-L-008644-23

**In the matter of:** 24 CAMERON ST N  
KITCHENER ON N2H3A1

**Between:** Oreoluwa Fasola

**And**

Michelle Walker  
Donovan Walker  
Tristan Walker

**And**

Rudolph Polack

I hereby certify this is a  
true copy of an Order dated  
**October 10, 2023**  
*Ajitinder Dermal*  
Landlord and Tenant Board

Landlord

Tenant

Former  
Landlord

Rudolph Polack (the ‘Former Landlord’) and Oreoluwa Fasola (the ‘Landlord’) applied for an order to terminate the tenancy and evict Michelle Walker, Donovan Walker and Tristan Walker (the ‘Tenants’) because the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser 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 Tenants remain in the unit after the termination date.

This application was heard by videoconference on June 15, 2023. The Former Landlord, Oreoluwa Fasola, the Landlord legal representative, J. Dean and the Tenants attended the hearing.

**Determinations:**

1. The application is amended to reflect Oreoluwa Fasola as being the Landlord. When he bought the tenanted property he “stepped into the shoes” of the former landlord given the operation of section 18 of the *Residential Tenancies Act, 2006* (the ‘Act’).
2. For the reasons below, I find that the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation. Therefore, the tenancy is terminated effective October 21, 2023 (standard 11 days from the issuance date of this order).
3. On January 25, 2023, the Landlord, Rudolph Polack gave the Tenants an N12 notice of termination deemed served on the same day with the termination date of March 31, 2023. The notice was personally served upon the tenants. The notice was given on behalf of the

purchaser, Oreoluwa Fasola, who claims that he requires vacant possession of the rental unit for the purpose of residential occupation.


4. The Tenants did not vacate the rental unit by the termination date of March 31, 2023.
5. The agreement of purchase and sale stated a closing date of April 09, 2023, but the property ultimately closed on May 08, 2023.
6. The Landlord has proven that:
  - o the residential complex contains three or fewer units.
  - o the purchaser entered into an agreement of purchase and sale of the residential complex which closed on May 08, 2023.
  - o the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
7. The Landlord has compensated the Tenants an amount equal to one month's rent by March 31, 2023 by waiving the rent for March 2023.
8. There is no last month rent deposit collected by the Landlord.
9. The current monthly rent is \$1,800.00 and this is a month-to-month tenancy.
10. The Tenants were in possession of the rental unit when the L2 application was filed, and the Tenants are in possession as of the hearing date.
11. The Landlord gave evidence that prior to purchasing the property he was aware that it was a tenanted property. It was his understanding that the Former Landlord would be issuing any notices to the Tenants to gain vacant possession.
12. The Landlord's legal representative submitted the agreement of purchase and sale as evidence which was signed between the parties on December 21, 2022. The Landlord testified that the closing date as per the agreement of purchase and sale was supposed to be April 09, 2023. The Landlord testified that since the Tenants did not vacate by that date, the parties extended the closing date to May 08, 2023 and the property ultimately closed on that day.
13. The Landlord's legal representative next submitted as evidence the deed to the property which stated the purchaser as the registered owner and confirmed that the property was registered under the Landlord's name on May 08, 2023.
14. The N12 was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that he has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.
15. In *Feeney v. Noble*, 1995 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal.
16. The Landlord testified that it is his good faith intention to reside in the property for the purpose of residential occupation for a period of at least one year. The Landlord testified that he is currently residing with a friend as he cannot move into his property. The Landlord testified that as a result he is unable to have overnight visits with his four-year-old son.

17. The purchaser testified that he is facing financial issues as he is currently paying the mortgage and maintenance costs on a property that he does not reside in.
18. The Tenant Michelle Walker testified that she does not deny the fact that the Landlord wants to move into the property.
19. Based on the evidence of the purchaser and the Tenants, I accept that the Landlord intends, in good faith, to live in the rental unit for at least one year.
20. 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. The Tenants testified that there is mold in the rental property, but they did not serve or file any evidence pertaining to this. Further, the Tenants continued to reside in the property and only made a complaint to the city of the mold issue on June 12, 2023, three days prior to this hearing date. In my view, while it may constitute a breach of the Act, it does not rise to the level of a serious breach within the meaning of s. 83(3)(a) of the Act.
21. The Landlord is seeking a standard eviction order. The Tenants were served with the N12 Notice and the Notice of Hearing, which both warned of a possible eviction. In the circumstances I am satisfied that a standard order is appropriate.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated, effective October 21, 2023 (standard 11 days from the issuance date of this order).
2. If the unit is not vacated on or before October 21, 2023, then starting October 22, 2023, 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 22, 2023.
4. The Tenants shall pay to the Landlord \$4,497.53, which represents compensation for the use of the unit from April 1, 2023 to June 15, 2023 less any amounts already paid.
5. The Tenants shall also pay the Landlord compensation of \$59.18 per day for the use of the unit starting June 16, 2023 until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before October 21, 2023, the Tenants will start to owe interest. This will be simple interest calculated from October 22, 2023 at 6.00% annually on the balance outstanding.
7. The Landlord or Tenant shall pay to the other any sum of money that is owed as a result of this order.

**October 10, 2023**  
**Date Issued**

  
\_\_\_\_\_  
Ajay Grewal  
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 April 10, 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.