



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

**Citation:** Hall v Wiseman, 2024 ONLTB 9209

**Date:** 2024-02-05

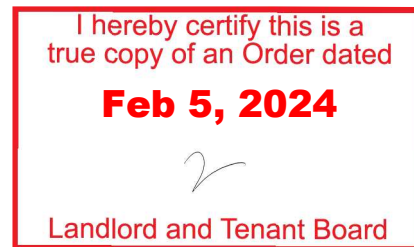
**File Number:** LTB-L-090762-23

**In the matter of:** 112 ALBERT ST N  
LINDSAY ON K9V4K5

**Between:** Barbara Hall  
Kelly Mackey  
Joshua Hall

**And**

Victoria Wiseman



Landlords

Tenant

Barbara Hall, Kelly Mackey and Joshua Hall (the 'Landlords') applied for an order to terminate the tenancy and evict Victoria Wiseman (the 'Tenant') because:

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

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date (L2 application).

The Landlords also applied for an order to terminate the tenancy and evict the Tenant because the Tenant gave notice to terminate the tenancy accepted by the Landlords (L3 application).

This L2/L3 application was heard by videoconference on January 24, 2024.

The Landlords' Legal Representative, Calvin Chan, two of the Landlords, Barbara Hall (BH) and Kelly Mackey (KM), and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the hearing.

The following witnesses testified at the hearing:

Daniel Smith – Client – on behalf of the Tenant

Jean Van Scheyndel (JVS) – friend - on behalf of the Tenant

**Determinations:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.

L2 application – Landlords' own use

3. On October 27, 2023, the Landlords gave the Tenant an N12 notice of termination with the termination date of December 31, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation.
4. Based on the evidence before me, I find that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year.
5. KM, who currently resides in Alberta, testified that BH and he want to move back to the rental unit to be closer to family. He testified that he grew up in the area and that his mother, siblings, daughters, and grandchildren all live in the surrounding area.
6. The Tenant did not dispute that the Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
7. However, the Tenant stated that at the commencement of the tenancy the Landlords had promised her that she could reside in the unit as long as she needed. The Tenant's witness, JVS, testified that she had driven the Tenant to view the rental unit originally and recalled the Landlords saying that to the Tenant.
8. Although, this comment was made to the Tenant while she viewed the rental unit, I was not satisfied that it amounted to an agreement between the parties. There was no evidence to support that the parties subsequently entered into a tenancy agreement for an indefinite term.
9. There was no dispute that Landlords have compensated the Tenant an amount equal to one month's rent via e-transfer in November 2023.
10. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.

L3 application

11. Based on the evidence before me, I was satisfied that the Tenant gave the Landlords notice to terminate the tenancy effective December 1, 2023 and the Landlords agreed to the termination date.
12. KM testified that they prepared a "notice to end you Tenancy" for June 30, 2024 which was signed by them and delivered to the Tenant by BH on September 22, 2023. A copy of this notice was entered into evidence. KM testified that the Tenant hand wrote at the bottom of the notice the following:

"To Barb and Kelly  
It has been a wonderful 9 yrs in this home at 112 albert St. N. Lindsay ON K9V4K5  
Unfortunately things are the way they are right now. In the best interest of my  
children I am planning to move Dec 1, 2023. I will email by end of September to let  
you know 100% if it will be Dec 1, 2023 or Jan 1 2024. Thank you for being great  
people. I will keep in touch.  
Rev. Victoria Wiseman  
705-821-3332  
[TheLovingLighthouse@gmail.com](mailto:TheLovingLighthouse@gmail.com) "

13. KM also testified that they received a FB message on September 26, 2023 from the Tenant. A copy of the message was submitted into evidence. The message stated the following:

“Hi Barb, As per our conversation and you guys or perhaps just Kelly moving into the home, I told you I’d let you know if it would be December or January 1<sup>st</sup> by the end of the month. I’ll be moving for December 1<sup>st</sup> as I’m sure that would be better for Kelly than waiting until July 1<sup>st</sup> as per the 9 months notice you were kind enough to offer knowing that Kelly would have preferred sooner. As per the letter I wrote I enjoyed living here and would appreciate a reference letter for when it may be needed. Thanks in advance. You can send it to me via email @ thelovinglighthouse@gmail.com”
14. KM further testified based on the notice received by the Tenant they booked non-refundable flights to be back in Ontario for December 1, 2023. He also booked a meeting with a contractor for the beginning of December 2023 as he believed some work may need to be done to the unit.
15. The Tenant stated that she felt bullied into filling out the first notice when BH came to the rental unit. She stated that she had a client show up unexpectedly just before BH arrived. She also stated that she asked BH if she could look at it and fill it out later, but ended up filling it out while her client was there.
16. The Tenant’s client, DS, testified at the hearing that he was outside the rental unit with the Tenant when BH showed up. He stated that he overheard the entire conversation between BH and the Tenant as he was sitting at a picnic table near them. In particular, he testified that he heard the Tenant ask BH to come back later and BH’s response that she would like to get it done today.
17. Under cross-examination, the Tenant stated that she did not sign the notice to end her tenancy provided by the Landlords. However, she acknowledged that she wrote a note on it that she would vacate December 1, 2023 or January 1, 2024 and would be confirming which one at a later date. The Tenant also acknowledged that she subsequently sent a FB message to BH confirming that she would move out December 1, 2023.
18. The Tenant further stated that her plan to move into her deceased mother’s house with her stepfather for December 1, 2023 fell through because the house was seized by another owner, she was not aware existed. She stated that she then sent another FB message to the Landlords asking if she could stay until July 1, 2024. Under-cross examination, the Tenant confirmed that she would be okay with moving out July 1, 2024, the original date proposed by the Landlords.
19. Based on the uncontested evidence before me, I was satisfied that the Tenant provided the Landlords a notice to vacate in writing for December 1, 2023 or January 1, 2024, then subsequently confirmed in writing that it would be December 1, 2023. I was satisfied that the Landlords accepted this notice and agreed to terminate the tenancy on December 1, 2023. The Landlords purchased non-refundable flights to be in Ontario for December 1, 2023 and planned to be at the rental unit for December 1, 2023 to change the locks and see what if any work needed to be done to the unit before they move back into the unit.

20. The parties' agreement to terminate is a binding contract, without a legal compelling reason, such as duress, to set the agreement aside, the agreement should be enforced. Duress, by legal definition, generally is where one person makes unlawful threats or otherwise engages in coercive behaviour that causes another person to commit acts.
21. Based on the evidence before me, I was not satisfied that the Tenant provided the initial notice to vacate under "duress." The Tenant wrote a note on the notice that the Landlords provided her, the contents of which are stated in paragraph 14 of this order. Given the way the note is written and its length and that the vacate dates provided were solely suggested by the Tenant, I was satisfied that the Tenant wrote this vacate notice of her own free will.
22. Additionally, there was no dispute that the Tenant sent the FB message, contained in paragraph 15 of this order, sometime after meeting with BH and confirmed a vacate date of December 1, 2023 without any influence from the Landlords.
23. Consequently, I find that the Tenant's notice to vacate the rental unit for December 1, 2023 was valid and the Landlords who agreed with this date were entitled to rely upon it.
24. The Landlords collected a rent deposit of \$1,120.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$176.02 is owing to the Tenant for the period from August 15, 2014 to January 24, 2024.
25. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

#### Relief From Eviction


26. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until June 30, 2024 pursuant to subsection 83(1)(b) of the Act.
27. The Landlords' Legal Representative requested an order terminating the tenancy. The Landlords' Legal Representative submitted that after hearing the Tenant's evidence and submission the Landlords agrees to extend the termination date to March 31, 2024 or in the alternative to the date the Tenant agreed to at the hearing being June 30, 2024.
28. The Tenant has resided in the rental unit with her two children for nine years. She stated that her children each have one more year in their respective elementary and secondary schools. She also stated that she has a number of health concerns and receives ODSP. She further stated that she has a surgery scheduled for April 2024 as well as requiring additional surgeries in the future.
29. Given that the Tenant has a surgery scheduled for April 2024, and in the alternative the Landlords did not oppose an extension of the eviction, I find that it would not be unfair to delay the eviction until June 30, 2024.

#### **It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before June 30, 2024.

2. The Tenant's last month's rent deposit shall be applied to June 2024.
3. The Tenant shall pay to the Landlords \$36.16 per day for compensation for the use of the unit starting July 1, 2024 to the date the Tenant moves out of the unit.
4. If the unit is not vacated on or before June 30, 2024, then starting July 1, 2024, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
5. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after July 1, 2024.
6. The Landlords owe the Tenant \$176.02, which is the current amount of the interest owing on the rent deposit.
7. The Landlords or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**February 5, 2024**  
**Date Issued**

  
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Lisa Del Vecchio  
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 January 1, 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.