



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

**File Number:** HOL-08372-20

**In the matter of:** UPPER UNIT - 20 WILKES CRESCENT  
TORONTO ON M1L0B3

**Between:** Masood Akhtar Landlord

**and**

Aamer Sana Tenants  
Farina Aamer  
Navid Sana

Masood Akhtar (the 'Landlord') applied for an order to terminate the tenancy and evict Aamer Sana, Navid Sana and Farina Aamer (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

The hearing was held by videoconference on June 8, 2021. The Landlord, the Landlord's representative, Gathyayini Manoharan, and one of the Tenants, Aamer Sana, attended the hearing.

**Determinations:**

1. On August 31, 2020 the Landlord served the Tenants with an N12 Notice of Termination (N12) with a termination date of October 31, 2020. The N12 seeks termination of the tenancy on the ground that the Landlord requires the rental unit for residential occupation.

Good faith

2. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006 (Act)*. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.
3. In *Feeney v. Noble*, 1994 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. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have

additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."

4. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."
5. The Landlord testified that he sold his current residence, and that he now requires the Upper Unit at 20 Wilkes Crescent to accommodate his family for a long time – well beyond a year. This unit will also be closer to his work.
6. The Tenant testified that he believed that the Landlord would not move into the unit; however, he could not provide any further reasons or proof for this assertion.
7. Despite the Tenant's doubts about the Landlord's intention to reside in the unit, given the Landlord's declaration dated August 24, 2020, as well as his testimony, we believe that the Landlord genuinely intends to live in the unit for at least one year.
8. Therefore, we find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year.

#### Compensation

9. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.
10. The Landlord attempted to pay the Tenants one month's rent compensation on January 7, 2020, for a previous application for eviction for the Landlord's residential occupation; however, the Tenants returned the funds claiming that they were unaware why they received them.
11. We are satisfied that the Landlord attempted to meet his obligation to pay the Tenants compensation equal to one month's rent and it was the Tenants that refused to accept the compensation, or to make sufficient inquiries with the Landlord before returning the funds. Therefore, we will exercise our authority under s.190(2) of the Act and extend the Landlord's deadline to make the payment until July 31, 2021. The tenancy will only terminate if the Landlord makes this payment.

Relief from Eviction

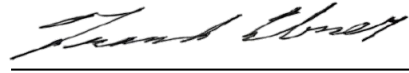
12. We have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act') and find that it would not be unfair to postpone the eviction until September 30, 2021 pursuant to subsection 83(1)(b) of the Act.
13. We have considered the Tenants' circumstances, including their inability to successfully find alternate accommodations as a result of a more restrictive and expensive COVID-19 rental market, as well as their financial constraints that have also been exacerbated by the current pandemic.
14. We find that, although the Landlord in good faith requires possession of his rental unit for his family's residential occupation, postponing the Tenants' eviction until September 30, 2021 will provide the Tenants with more time in a less restrictive COVID environment to secure a rental unit that can accommodate their family. We find that this postponement would not be unfair to the Landlord.


2021 CanLII 94698 (ON LTB)

**It is ordered that:**

1. On or before July 31, 2021, the Landlord shall pay the Tenants \$1,800.00 representing compensation equal to one month's rent as required by section 48.1 of the Residential Tenancies Act, 2006 (Act).
2. If the Landlord pays the Tenants \$1,800.00 on or before July 31, 2021, the tenancy shall terminate effective September 30, 2021, and the Tenants must vacate the rental unit by September 30, 2021. If the Landlord does not pay the Tenants \$1,800.00 on or before July 31, 2021, the tenancy is not terminated and the Tenants do not have to vacate the rental unit.
3. If the unit is not vacated on or before September 30, 2021, then starting October 1, 2021, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 1, 2021.

**June 25, 2021**  
**Date Issued**

  
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Frank Ebner  
Member, Landlord and Tenant Board

  
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Kathleen Wells  
Member, Landlord and Tenant Board

Toronto East-RO  
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Toronto, ON M1P 3E7

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 expires on March 1, 2022 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.