



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

**File Number:** TEL-15380-21

**In the matter of:** BASEMENT UNIT, 152 HEALE AVENUE  
SCARBOROUGH ON M1N3Y1

**Between:** Shain Akhter Faizunnessa Landlords  
Mohammed Hefzur Rahman

**and**

Carol Bell Tenants  
Kymani Watson

**This order amends the original order issued on July 21, 2021 which contained a clerical error. All changes to the original order are issued in underlined script and bolded.**

Shain Akhter Faizunnessa and Mohammed Hefzur Rahman (the 'Landlords') applied for an order to terminate the tenancy and evict Carol Bell and Kymani Watson (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation for their child. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

The application was heard by way of video conference at 9:00 am on June 29, 2021. The Landlords and Tenants attended the hearing. Mohammed Rahman, the Landlord's son and Keisha Rampersaud, the Landlord's daughter-in-law attended the hearing as a witness for the Landlords. The Tenants declined the opportunity to speak to Tenant Duty Counsel prior to the hearing.

**Determinations:**

1. On December 27<sup>th</sup>, 2020 the Landlords served the Tenants with an N12 Notice of Termination (N12) with a termination date of February 28<sup>th</sup>, 2021. The N12 seeks termination of the tenancy on the ground that the Landlords require the rental unit for residential occupation for their son.

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 Landlords must establish that at the time of the service of the N12 Notice, they 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 whether the Landlord has a 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.
4. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.

#### Landlord's Evidence

5. The Landlord's son and daughter-in-law intend to move into the residential unit for at least one year and they have signed a declaration attesting to this.
6. The Landlord's son currently lives in the upper unit with his wife.
7. The Landlords will be moving into the property on a full-time basis and they will be residing in the upper unit. The Landlord's son will be moving into the basement unit. The Landlord's have health conditions and are dependant on their son to help and support them.
8. The Landlords will be moving back to Canada from Bangladesh. One of the Landlords was planning on coming back to Canada in April 2021 and the other in May 2021. The flight tickets have been delayed until the 3<sup>rd</sup> week of July 2021 as the Landlords have been unsuccessful obtaining the rental unit.
9. There was a one-year lease in place with the Tenants that ended October 2018 and was up for renewal at that time. At that time the Landlords communicated to the Tenants that they would like to stop renting to the Tenants as they would like to move back to Canada and that they would be willing to have the Tenants enter into a 9 month lease which would coincide with the time they wanted to return to the country. The Tenants refused to sign the lease for a period of 9 months. Therefore, the Tenants are currently on a month-to-month tenancy.
10. On August 31<sup>st</sup>, 2020 the Landlords sent an email to the Tenants stating that they wanted to evict the Tenants so that their son could move into the unit. The Tenants responded that this was not a formal notice and that the Landlords must serve them with the proper Landlord and Tenant Board forms.
11. On December 27<sup>th</sup>, 2020, the Landlords issued the N12 to the Tenants.

12. The Landlord's son testified at the hearing that he is currently residing in the upper unit with his wife and they were married in October 2018. Prior to his marriage his mother would come and stay with him periodically a few times a year when visiting from Bangladesh, but since he married, she has only come for a temporary stay in 2019. He testified that there are 3 bedrooms in the upper unit that he currently lives in, one is the master bedroom that they use as their bedroom and the other 2 bedrooms are relatively small. His evidence was the upper unit is not large enough to accommodate himself, his wife and his parents. He stated that now that he is married, he needs his own unit and privacy given that he and his wife plan to have a family. They both work from home and therefore each require one of the 2 small bedrooms for an office. He noted his parents do have health conditions and are dependant on him to help and support them.
13. The Landlords daughter-in-law largely confirmed her husband's evidence. She stated that she married the Landlord's son in October 2018, and that they have been residing in the upper unit and that it consists of 3 bedrooms. She testified that they use the master bedroom as their bedroom and that they have each taken another bedroom as an office. She testified that she works remotely for a large bank and will likely be permanently working from home post-Covid. She also testified that they plan on starting a family and there is not enough space for all of them to live in one unit, that they are newlyweds and need their own privacy. She also testified that they need to be close to her in-laws so that they can take care of them

#### Tenants Evidence

14. The Tenants disputes the Landlord's intention to move their son into the rental unit. The Tenant disputes that the Landlords will be moving back to Canada on a full-time basis as the Landlord told her in past discussions that she only resides in Canada 6 months of the year and the other 6 months in Bangladesh.
15. The Tenants signed a one-year lease September 2018 with the Landlords. In August 2019 the Landlords sent a lease renewal to the Tenants to sign which indicated a rent increase of \$100.00 per month. The Tenants refused to sign the lease agreement with the \$100.00 increase. After the Tenants refused to sign the lease with the increase the Landlord sent another lease agreement for her to sign to commence in September 2019 and end May 2020. The Tenant feels that because she refused to sign the lease agreement with the \$100.00 increase that the Landlord is retaliating by only offering a 9-month lease to her.
16. The Landlords gave the Tenants a written eviction notice in August 2020 and the Tenants did not respond to it as the proper procedures were not followed as required by the Act. the Board.
17. The Landlords then gave the Tenants proper notice on December 27<sup>th</sup>, 2020 and the Tenants continued to pay their rent. The Landlords refused the payments for January 2020 and February 2020 and then in March 2020 the Landlords asked the Tenants to start paying their rent again.

18. The Tenants claim the Landlords resides in the upper unit and has cats at the property. The Tenants can hear them walking around all the time and claims that there is excessive noise coming from the upper unit and that the Landlords son throws items on the floor all of the time which makes loud noises. They further testified they can smell cannabis coming from the upper unit. The Tenant, Kymani Watson testified that he smells cannabis in the unit and that he can hardly breathe and that he needs to open the windows and the doors that this has taken a toll on him. The Landlords son and the Landlords daughter-in-law dispute these acquisitions. The Tenant has filed a T2 application with the Board for these issues.
19. The Tenants brought up a maintenance issue of poor ventilation in the unit. The Landlords testified that they did correct the issue.

### Analysis

20. I am persuaded by the testimony of the Landlords son and daughter-in-law as well as their declaration that they genuinely intend to move into the rental unit for a minimum of one year as their parents are coming back to Canada to live full time and will be residing in the upper unit. Therefore, I find the Landlords son in good faith requires possession of the rental unit for the purpose of residential occupation for a minimum of one year.

### Compensation

21. 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.
22. The Landlords testified that they paid compensation equal to one months rent on February 27, 2021 in the amount of \$1067.00 by e transfer to the Tenants. The amount is reflective of one month's compensation of \$1000.00 and interest on Last Month rent Deposit owing of \$67.00. The Tenants did not accept the e transfer that was sent to them.
23. After they did not accept the e transfer the Landlords tried to follow up with the Tenants and the Tenants advised that when they were ready to move out that they would let the Landlords know by providing 60 day notice.
24. I find that the Landlord has discharged its obligation to pay compensation to the Tenants. Tenants who are subject to a valid application under s. 48 cannot frustrate the Landlord's good faith efforts to take possession of the unit by refusing to accept compensation.

Refusing to accept an e-transfer is akin to failing to cash a cheque, it is open to a tenant to do so but it does not mean that the Landlord has failed to pay the required compensation. A finding to the contrary would allow a Tenant to perpetually frustrate the Landlord's attempts under s. 48 be continually refusing to accept payment. However, I am aware that some e-transfer services remit the funds back to the sender if they are not accepted within a certain time period. Should that happen here, I expect the Landlord to take reasonable steps to ensure that the compensation is provided to the Tenants".

#### Relief from Eviction

25. 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 September 30, 2021 pursuant to subsection 83(1)(b) of the Act.
26. The Tenants testified that they do not wish to stay at the rental unit and that they do want to leave but they are dealing with personal issues that they do not wish to disclose. The Tenants stated that as soon as these issues are sorted out that they would give the Landlord 60-days notice and would try to give less notice to them if they are able to get their personal issues sorted out.
27. I find that, although the Landlords in good faith requires possession of the rental unit for residential occupation for their son, postponing the eviction until September 30th, 2021, will provide the Tenants with more time. Although there are signs that the end may be in sight, Ontario is still in the midst of a pandemic, and I accept that currently it is more difficult to find alternate accommodations than in normal times. This extra time will also allow for the Tenants to sort out their personal issues.

#### It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated, as of September 30, 2021. The Tenants must move out of the rental unit on or before September 30<sup>th</sup>, 2021.
2. The Tenants shall pay to the Landlords \$3,643.27, which represents compensation for the use of the unit from March 1, 2021 to July 21, 2021, less the rent deposit and interest the Landlords owe on the rent deposit. **Any rent payments the Tenant has made during this period must offset against the amount to be paid to the Landlord.**
3. The Tenants shall also pay to the Landlords \$32.88 per day for compensation for the use of the unit from July 22, 2021 to the date they move out of the unit
4. If the Tenants do not pay the Landlords the full amount owing on or before September 30, 2021, then the Tenants will start to owe interest. This will be simple interest calculated from October 1, 2021 at 2.00% annually on the balance outstanding.

5. 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.
6. 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.

**July 21, 2021**  
**Date Issued**



**Trish Carson**  
Member, Landlord and Tenant Board

**September 28, 2021**  
**Date Amended**



**Trish Carson**  
Member, Landlord and Tenant Board

Toronto East-RO  
2275 Midland Avenue, Unit 2  
Toronto ON M1P3E7

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 April 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.