

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

**File Number:** SOL-23822-21

**In the matter of:** 364 PLEASANT RIDGE ROAD  
BRANTFORD ON N3T5L5

**Between:** Manuel Azevedo Landlord

**and**

Danielle Davis Tenant

Manuel Azevedo (the 'Landlord') applied for an order to terminate the tenancy and evict Danielle Davis (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was scheduled by videoconference on November 3, 2021 at 9:00am.

Only the Landlord attended the hearing when the matter was called at 10:28am. The Landlord was represented by Jason Tims, an articling student with Jesse Dostal.

**Determinations:**

1. At the beginning of the hearing, the Landlord advised that it had come to his attention that the Tenant was incarcerated the week of October 26, 2021 which may be a reason why she was not in attendance. The Landlord confirmed that at no point did the Tenant seek an adjournment or express an interest to participate in this hearing.
2. The Board's records show the notice of hearing was served to the Tenant September 10, 2021 before her incarceration. I am satisfied the Tenant was served and chose not to send someone to represent her in her absence or seek an adjournment. I proceeded to hear the matter uncontested.

**L2 APPLICATION**

3. The Tenant is in possession of the rental unit.
4. By way of background, this is a month to month tenancy in which rent is due on the first of the month.
5. The Landlord's L2 application is based on a N12 notice of termination served to the Tenants on July 29, 2021 with a termination date of September 30, 2021.

6. As of the date of the hearing, the compensation required to be paid to the Tenants pursuant to 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') has been paid in the form of a cheque given to the Tenant on July 29, 2021 which was cashed by the Tenant on September 8, 2021. I am satisfied that the Landlord has met the compensation requirements under sections 48.1 and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').
7. At the hearing, the Landlord filed a declaration from the Landlord's son, Paul Azevedo (PA), who is the child referred to on the N12 notice of termination, confirming that he would be moving into the rental unit for his own personal use for a period of one year.
8. The Landlord testified that he has two sons living in the same area and that Paul would inherit the rental unit in the Landlord's will. At present, PA lived 20 km away from the rental unit.
9. The Landlord seeks a termination of the tenancy.

#### ANALYSIS

10. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), [1994] O.J. No 2049, 19 O.R. (3d) 762 (Ont.Div.Ct.) 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 by the Courts in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792, 201 D.L.R. (4th) 744 (Ont.Div.Ct.). In *Salter v. Beljinac*, 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."
11. 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."
12. Based on the Landlord's uncontested evidence, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for his son. The reasons provided for the move were rationale and consistent. I have no reason to doubt the credibility of the Landlord.
13. 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 Landlord is unaware of any circumstances that would justify relief from eviction.
14. The Landlord collected a rent deposit of \$2,200.00 from the Tenant and this deposit is still being held by the Landlord.
15. Interest on the rent deposit is owing to the Tenant for the period from September 30, 2020 to September 30, 2021

16. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated, as of September 30, 2021. The Tenant must move out of the rental unit on or before November 20, 2021.
2. The Tenant shall pay to the Landlord \$691.00 (less any amount paid by the Tenant to the Landlord after the application was filed with the Board) , which represents compensation for the use of the unit from October 1, 2021 to November 9, 2021, less the rent deposit and interest the Landlord owes on the rent deposit.
3. The Tenant shall also pay to the Landlord \$72.33 per day for compensation for the use of the unit from November 10, 2021 to the date the Tenant moves out of the unit.
4. If the Tenant does not pay the Landlord the full amount owing on or before November 20, 2021, the Tenant will start to owe interest. This will be simple interest calculated from November 21, 2021 at 2.00% annually on the balance outstanding.
5. If the unit is not vacated on or before November 20, 2021, then starting November 21, 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 November 21, 2021.



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Sonia Anwar-Ali  
Member, Landlord and Tenant Board

**November 9, 2021**  
**Date Issued**

Southern-RO  
119 King Street West, 6th Floor  
Hamilton ON L8P4Y7

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 May 21, 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.