



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

**File Number:** SOL-21876-21

**In the matter of:** 5463 PALMER AVENUE  
NIAGARA FALLS ON L2E3V2

**Between:** Michael Lam

**And**

Alexandra Batista  
Yulian Ramirez

I hereby certify this is a  
true copy of an Order dated

**May 31, 2022**

Landlord and Tenant Board

Landlord

Tenants

Michael Lam (the 'Landlord') applied for an order to terminate the tenancy and evict Yulian Ramirez and Alexandra Batista (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.

This application was heard by video conference on April 19, 2022.

The Landlord, the Landlord's legal representative, J. Nieuwhof, and the Tenants attended the hearing.

**Determinations:**

1. The Landlord sent into evidence proof that he had paid the Tenant compensation equal to one month's rent on December 2, 2021. This was before the termination date of December 31, 2021, listed on the N12 notice of termination, and therefore in accordance with the requirement of section 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').
2. The Landlord testified that he is soon turning 65 years old, and he is retiring from his acupuncture practice in Mississauga. He said he intends to move into his property in Niagara Falls as his retirement house. He said that he currently rents a unit in Mississauga because he cannot afford to buy a property there. He also said that he intends to move into the rental unit with his 31 year old son who is not currently employed. The Landlord said that he owns another property in Niagara Falls, a rooming house, and it is not an appropriate place for him to live.
3. The Tenants testified that they believe that the Landlord does not, in good, faith, intend to move into the rental unit for at least one year. They said that his true intention is to sell the house, and he tried to sell the house about a year previously. They also said that the

Landlord has neglected maintenance of the rental unit. They said that the Landlord always complains to them about travelling to Niagara Falls.

4. The Tenants said that they would like to remain in the rental unit because they have just started a cleaning business, and that most of their clients live in the Niagara Falls area. They said that any other rental units they have looked at are substantially more expensive. They also said that their children, a five year old, and a baby, are comfortable in the rental unit, and established in the neighbourhood.

Reasons and Analysis:

5. Subsection 48(1) of the Act provides that “a landlord may, by notice, terminate a tenancy if 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 by (a) the landlord....”
6. In the leading case law involving a landlord’s own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), a case in which the Landlord filed the application on the basis that he required possession of the rental unit for purpose of residential occupation by his adult son and the son’s family, the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal...

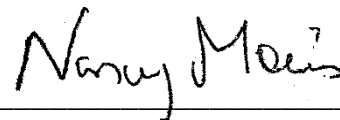
7. The case law in this area establishes that the test is determined by considering the intention of the person named in the application. If that person genuinely intends to reside in the unit then the notice is given in good faith.
8. The Landlord alleges that he is moving from Mississauga, an area where he has an established practise and where he has lived for many years, to Niagara Falls where he is unfamiliar with the community. This is not, perhaps, the choice that every one who is planning to retire would make. However, the Landlord testified that he does not own property in Mississauga, and his son is unemployed. He owns at least two properties in Niagara Falls, and it makes sense for him to want to be nearer to that other investment property, and to live in a house that he owns, in a place where his son might have a better chance of finding employment.
9. I find, based on the above, that the Landlord has proved, on a balance of probabilities, that he genuinely intends to move into the rental unit for at least one year. The Tenants’ evidence was insufficient to establish that the Landlord does not have a genuine intention to move into the rental unit.
10. The Tenants testified that they are established in the area and they need to remain in Niagara Falls in order to help grow their new business. They said that they are having difficulty finding an alternative place to live within their budget. They have had since the beginning of 2022 to find a new place to live. However, given their difficulties, I find that it is not unfair to give them a few more weeks to find a new rental unit.

11. I have considered all of the disclosed circumstances above 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 June 30, 2022, pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated, as of June 30, 2022. The Tenants must move out of the rental unit on or before June 30, 2022.
2. If the Tenants fail to vacate the rental unit on or before June 30, 2022, the Tenants shall also pay to the Landlord \$59.18 per day for compensation for the use of the unit from July 1, 2022 to the date they move out of the unit.
3. If the unit is not vacated on or before June 30, 2022, then starting July 1, 2022, 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 July 1, 2022.

**May 31, 2022**  
**Date Issued**



Nancy Morris  
Member, Landlord and Tenant Board

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 January 1, 2023 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.