



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

**File Number:** HOL-09866-21

**In the matter of:** 734 COOK CRESCENT  
SHELBURNE ON L9V3V2

**Between:** Andy Juma Landlords  
Vera Sarpong

**and**

Amanda Halfacree Tenants  
Shaun McCarthy

Andy Juma and Vera Sarpong (the 'Landlords') applied for an order to terminate the tenancy and evict Shaun McCarthy and Amanda Halfacree (the 'Tenants') because the Landlords require possession of the rental unit for the purpose of residential occupation

This application was heard by videoconference on July 22, 2021.

The Landlords and the Landlord's Legal Representative J. Kuner and the Tenants attended the hearing.

**Determinations:**

1. For the reasons that follow, I find that the Landlords in good faith require possession of the rental unit for the purpose of personal residential occupation for a period of at least one year. The tenancy between the Landlords and the Tenants will be terminated.

*Facts*

2. On March 11, 2021, the Landlords served an N12 Notice of Termination ('N12 notice') on the Tenants. The N12 notice states that the Landlords intended to move into the rental unit and occupy it for at least one year. The N12 notice sought possession of the rental unit for May 31, 2021.
3. Section 48.1 of the *Residential Tenancies Act, 2006*, S.O. 2006, c.17 ('Act'), requires the Landlords to provide compensation to the Tenants in amount equal to one month's rent where an N12 notice is served. It was uncontested that the Landlords provided compensation to the Tenants on May 27, 2021.
4. The Landlords testified that they require the rental unit to reside in and purchased the house to be their family residence.

5. The Landlords provided declarations stating that each of them intended to reside in the rental unit for residential occupation for a period of at least one year. (Exhibit 1 & 2) Both Landlords attended at the hearing and provided confirmation of their intentions.
6. The issue to be determined by the Board is whether the Landlords have satisfied the “good faith” requirement set out in subsection 48(1) of the Act which provides: 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 by:

(a) the landlord

*The Landlord’s good faith intention*

7. The onus is on the Landlords to establish that the Landlords in good faith require the rental unit for the purpose of their personal residential occupation.
8. In the leading case law involving a landlord’s own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), 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...
9. Thus, the Landlords must establish that they genuinely intend to move into the unit. The Court also found in *Salter* that the landlord’s motives are “largely irrelevant”.
10. The Landlords provided clear and consistent evidence that they intend to move into the rental unit for at least one year for residential occupation. They testified that they purchased the home to move into it as their full-time permanent residence. They testified that as they have not been able to move into the home, they had to stay with friends and have recently been asked to vacate the residence they were staying in.
11. The Tenant testified that he doubted the good faith of the Landlords as they had served the Tenants with an N12 notice previously, which had been dismissed by the Board at a hearing as the notice did not provide 60 days notice prior to the proposed termination date. The Tenant also testified that he felt the Landlords were not bringing the application in good faith as they had previously failed to maintain the rental property and the Tenants brought a T6 Application against the Landlords to have them complete necessary maintenance and repairs in the unit.
12. The Tenant further testified that when he first met the Landlords, when they purchased the property in 2019, the Landlords asked him to sign a long term lease and when he refused, they stated that they would sell the rental unit. The Tenant testified that again in September 2020 the Landlord’s threatened to sell the house. (Exhibit 6) As a result, the Tenant testified that he did not believe that the Landlords would be moving into the unit if the Tenants’ vacate the unit.

13. The Landlords testified that they served the N12 Notice as they have no other home to reside in and they intend to reside in the rental unit. The Landlord A. Juma testified that they purchased the home to live in and they wish to live in the home, they do not intend to sell the home. The Landlord testified that the maintenance work has been done.
14. The Landlord V. Sarpong testified that she intends to live in the home and does not intend to sell it. She testified that when the N12 Notices were served the couple had firm intentions to move into the unit and reside there and they still do. She testified that they do not intend to sell the rental unit. She testified that they are required to move out of their current residence and want to move into the rental unit forever.
15. On the evidence before the Board, I have no reason to doubt the truthfulness of the Landlords' testimony or their good faith intentions. The Tenant's evidence and submissions did not provide evidence to the contrary or contradict the Landlords' evidence. It was not contested that the maintenance issues raised by the Tenants were resolved, and if any remained there was insufficient evidence to find that they were substantial and ongoing, and it was uncontested that the prior N12 notice was dismissed on the basis of a technical error. The Landlords may have stated they could sell the house, but that statement was made some 6 months prior to the N12 being served. I find that at the time the N12 Notice was served the Landlords had a genuine intention to reside in the rental unit.
16. I am therefore satisfied on the balance of probabilities, that the Landlords, in good faith require possession of the rental unit for the purpose of residential occupation for a minimum of one year.

*Section 83 considerations*

17. Pursuant to section 83 of the Act, I am required to consider all of the circumstances in the case including both parties' situations to determine if it would be appropriate to grant relief.
18. The Landlords testified that they were required to move out of their current residence and did not have alternative accommodations to move into. However, they testified that previously they were able to stay with friends or family on a temporary basis in the past when necessary. The Tenant testified that Ms. Hafacree has a 10 year old son and that both himself and her and her son would require time to vacate the rental property. The Tenant requested 60 days to move out if the tenancy was terminated.
19. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006*, and find that it would not be unfair to postpone the eviction of the Tenant until September 30, 2021, pursuant to subsection 83(1)(b) of the Act. Ms. Hafacree has a young school aged child and will require time to relocate. The Landlords testified that in the past they have been obtained temporary accommodations and likely would have done so by the date of the issuance of this order.

**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, 2021.
2. If the unit is not vacated on or before September 30, 2021, then starting October 1, 2021, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 October 1, 2021.



**September 3, 2021**  
**Date Issued**

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Nicola Mulima  
Member, Landlord and Tenant Board

Head Office  
777 Bay Street, 12th Floor  
Toronto Ontario M5G2E5

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 2, 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.