



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

**Citation:** Rafiq v Galvez, 2024 ONLTB 9618

**Date:** 2024-02-09

**File Number:** LTB-L-035489-23

**In the matter of:** Upper Unit, 87 PARKLAND CRES  
KITCHENER ON N2N1R5

**Between:** Asif Rafiq Landlord

**And**

Melissa Lee Galvez Tenants  
Mathieu Brendan Lynagh

Asif Rafiq (the 'Landlord') applied for an order to terminate the tenancy and evict Melissa Lee Galvez and Mathieu Brendan Lynagh (the 'Tenants') because:

- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year.

This application was heard by videoconference on January 24, 2024.

The Landlord's Legal Representative, Cheryl Martine-Ostler, the Landlord, the Landlord's witness, Jazib Khan, the Tenants' Legal Representative, Mitchell Kent and the Tenant, Melissa Lee Glavez, attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on February 9, 2024.
2. The Tenants was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination- Landlord's own use

3. On March 30, 2023, the Landlord gave the Tenants an N12 notice of termination with the termination date of May 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their son.
4. The Landlord in good faith requires possession of the rental unit for the purpose of their son's residential occupation for a period of at least one year.

The Landlord's son genuinely intends to move into the rental unit

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5. The Landlord submitted an affidavit sworn by his son, JK, that he intends to move into the rental unit and live in it for a period of one year to pursue his education at Wilfred Laurier University wherein he was accepted for the Bachelor of Business Administration program. To corroborate the son's testimony, the Landlord submitted documents pertaining to his admission into the program . When I consider the information in JK's affidavit together with the correspondence from the school that he is enrolled in for his Bachelor of Business program, I am satisfied that it is more likely than not that JK genuinely intends to move into the rental unit. The Tenants did not present any evidence to challenge JK's intention to move into the unit. Rather, the Tenants' position was that the N12 notice was served as a form of retaliation. I have dealt with this issue below.
6. The Landlord has compensated the Tenants an amount equal to one month's rent by the termination date in the N12 notice, which is May 31, 2023. The parties agreed that the compensation was paid by waiving the rent for the month of April 2023. Therefore, I am satisfied that the Landlord paid the compensation required by sections 48(1) and 55.1 of the *Residential Tenancies Act, 2006* (the 'Act').

Relief from eviction

7. It is the Tenants' position is that the N12 notice was served in retaliation because the Tenants attempted to secure their legal rights. The Tenant, MG, submitted that on November 18, 2022, the Landlord asked the Tenants if they would consider a rent increase above the guideline amount. Further , on November 18, 2022, the kitchen faucet needed replacing. In addition, on December 30, 2022, the Tenants found mold in the unit and contacted Kitchener/Waterloo property standards to come and in and inspect the mold. The Tenants claim that the Landlord served the N12 notice because they refused to pay the rent increase and raised maintenance issues.
8. The Landlord submitted that the rent increase was a humble request as his mortgage interest rates were considerably high. The Landlord testified that he did not pursue the

request after the Tenants informed him that they were not interested in paying the increase. In relation to the Tenants' maintenance issues, the Landlord testified that on January 1, 2023 he installed an exhaust fan as a corrective measure to remove the moisture that may sometimes build inside the washroom due to extreme cold weather. On November 19, 2023, the Landlord agreed to pay for the kitchen faucet.

9. Both parties submitted text messages to establish a timeline of events. Neither party contested the other's submissions. Therefore, on the balance of probabilities I find the Landlord acted in a reasonable timeline with regards to the maintenance issues the Tenant raised. In addition, since the maintenance issues were dealt with in a timely manner, I do not feel that there is a correlation with the maintenance issues from November 2022 and the N12 notice that was given in March 2023.
10. The Tenant, MG, submitted that an eviction would negatively impact their 5 year-old daughter. It would cause anxiety for her as she is shy. The Tenants are in a good school district and because the Tenant's mother lives in the area, they do not have to find childcare. It would be a financial burden on the Tenants to downsize and/or leave the area as they can only afford a place with a rent of \$2,500.00. The Tenants submitted that they have not looked for a new place.

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11. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I have considered all of the circumstances and I am not satisfied that the Landlord served this N12 notice in retaliation for the Tenants raising maintenance issues. Regarding this application, other than the N12 being served around the same time as the Tenants' letter requesting further maintenance, I do not find there is sufficient evidence to prove the N12 notice was retaliatory. I am therefore satisfied on the balance of probabilities, that the Landlord's son in good faith requires possession of the rental unit for the purpose of residential occupation and he genuinely intends to reside in the rental unit and for a period of at least one year. That being said, several months have passed since the service of the notice to terminate, I find no reason to postpone eviction further, particularly given that the Tenants have not made reasonable efforts to find a new place to live. Accordingly, a standard 11-day eviction order will issue.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before February 20, 2024.

2. If the unit is not vacated on or before February 20, 2024, then starting February 21, 2024, the Landlord 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 Landlord on or after February 21, 2024.

**February 9, 2024**

**Date Issued**

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Teresa Hunt

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

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 of the Tenants expires on August 21, 2024 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.