



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

**Citation:** Montgomery v English, 2024 ONLTB 20444

**Date:** 2024-04-02

**File Number:** LTB-L-057861-23

**In the matter of:** 1, 569 Green Street  
Port Elgin ON N0H2C4

**Between:** Marlon Montgomery Landlord

**And**

Tyler English Tenant

Marlon Montgomery (the 'Landlord') applied for an order to terminate the tenancy and evict Tyler English (the 'Tenant') because:

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

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on February 20, 2024.

The Landlord, the Landlord's Representative Laura Florence, the Tenant and the Tenant's Representative Jacqui Armstrong attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated and compensation is awarded.
2. The rental unit is #1 of six units in a large Victorian style home.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. On June 28, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for himself for a period of at least one year.
5. The Landlord attempted to pay the Tenant one-months compensation of \$950.00 by e-transfer dated August 11, 2023, but the Tenant declined or refused to accept the transfer.

When the Tenant attempted to pay rent for the month of October 2023, the Landlord rejected the payment and in doing so, completed the requirement of the payment of one month's rent. Although the compensation was not accepted until after the termination date in the N12 notice as required by section 55.1 of the Act, I find that the requirement was nevertheless satisfied for the purpose of this application since the LL made a good faith effort to make the payment prior to the termination date but the Tenant frustrated that effort.

### **Good Faith**

6. Subsection 48(1)(a) of the Act provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord in good faith requires possession of the unit for residential occupation for a period of at least one year. The evidence supports a finding that the Landlord intends, in good faith, to occupy the unit for residential purposes for at least one year.
7. The test of good faith is outlined in a series of judicial decisions. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is 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 means that the Landlord sincerely intends to occupy the rental unit. Although the Landlord may have other motives for selecting a particular rental unit, these would not affect the good faith of the Landlord's notice.
8. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court added that while the motives of the Landlord are "largely irrelevant", as determined in *Salter*, the Board may consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the residential unit.

## Landlord Evidence

9. The Landlord testified that he purchased the residential complex in February 2021 and since the time of purchase has intended on moving into unit #1 as his permanent home. He testified that this unit is large and would provide for the additional room needed for his daughter and her partner to stay with him during visits.
10. The Landlord testified that upon purchasing the residential complex, the prior owner had served an N12 notice on a tenant but that he had no knowledge of the service of that notice. He further testified that this is the second N12 he had served upon this Tenant, as the first application was dismissed.
11. The Landlord testified that he has resided in several of the units within the residential complex, after tenants have moved out, and while he resided in those units, he renovated them prior to relisting them for rent. He further testified that although two of the prior units he temporarily resided in were 2-bedroom units, based on the size and features of the Tenant's unit, this is the unit he has planned to move into since he purchased the property and to make his permanent residence. He testified that his intent was to reside in the unit for a minimum of one year, but that it was going to be his long-term residence.
12. The Landlord testified that he had offered the Tenant another 2-bedroom unit in the residential complex when it had been available, but the Tenant did not accept the unit.
13. The Landlord's daughter, Rezel May Linasa, testified that she and her father are very close and would like to visit her father more often. She further testified that currently there is no room in her father's unit for her to stay in, but that if he is able to move into the 2 bedroom unit, that she would be able to visit more often.
14. The Landlord's brother, Tom Montgomery, testified that the previous N12 served on a previous tenant at the time his brother purchased the residential complex, was served by the previous landlord, not his brother. He further testified that this was done without his brother's knowledge.
15. Tom Montgomery further testified that he did not assist with the purchase of the residential complex, he only introduced his brother to the previous owner.

## Tenant's Evidence

16. The Tenant testified that he has lived in this rental unit for 7 years and his rent is \$950.00 per month.
17. The Tenant further testified that this was the second N12 served on him and he believed it was in bad faith.
18. The Tenant testified that he was offered another 2-bedroom unit in the residential complex, but it was too small and his furniture would not fit into the unit.

19. The Tenant testified that he felt harassed and disrespected by the Landlord, as the Landlord would try to communicate with him repeatedly about him moving out of his rental unit.
20. The Tenant testified that the Landlord has had the ability to move into other 2 bedroom units within the residential complex and either renovated and rented them back out or converted them into two separate one bedroom units.

### Analysis

21. I find that, based on the evidence presented, and in accordance with the courts' decisions in *Feeney* and in *Salter*, the Landlord, in good faith requires possession of the rental unit for his own use as indicated in the N12 notice. I am satisfied that the Landlord has a genuine intention to occupy the premises for at least one year and, as such, issued the N12 notice in good faith.
22. I prefer the testimony of the Landlord, that since the purchase of the residential complex, he has had intent to move into unit #1. The fact that the Landlord had alternative options, does not diminish his intent to reside in that specific unit. The Tenant did not present any concrete evidence to challenge the testimony of the Landlord.
23. In the decision in *Caputo v. Newberg*, [2009] O.J. 2659, the court found that a consideration of whether the landlord could reside in one of the other units in the complex was not relevant for a determination of good faith, although it will be a relevant consideration under s. 83.
24. Although the Landlord had served a prior N12 Notice to the Tenant, I find that this does not disclose a pattern of behaviour relevant to bad faith.

### Relief from Eviction

25. The Tenant requested the termination date be extended 120 – 180 days, as he has no place to move and can not afford another rental unit.
26. The Landlord is seeking a standard order, with an eviction date 11 days from the date of the order.
27. 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 not be unfair to postpone the eviction until May 31, 2024 pursuant to subsection 83(1)(b) of the Act. This would provide the Tenant additional time to find an alternative rental unit and limit the prejudice to the Landlord. The Landlord does not appear to require the rental unit on an urgent basis.
28. The Landlord requested daily compensation for each day the Tenant continues to occupy the rental unit. At the hearing, the parties did not dispute that the rent is up to date up to February 29, 2024. Therefore, daily compensation will begin to run on March 1, 2024.

29. There is no last month's rent deposit.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before May 31, 2024.
2. If the unit is not vacated on or before May 31, 2024, then starting June 1, 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 June 1, 2024.
4. The Tenant shall pay the Landlord compensation of \$31.23 per day for the use of the unit starting March 1, 2024 until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before May 31, 2024, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2024 at 7.00% annually on the balance outstanding.

2024 ONL TB 20444 (CanLII)

**April 2, 2024**

**Date Issued**

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Brenda Mercer

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 Tenant expires on October 13, 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.