



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

**Citation:** Kamal v Khalid, 2024 ONLTB 61161

**Date:** 2024-08-26

**File Number:** LTB-L-092952-23

**In the matter of:** 204, 5 Massey Square  
Toronto Ontario M4C5L6

**Between:** Shehk Md Faisal Kamal Landlord

**And**

Md Tanvir Khalid Tenants  
Rabeya Akter

Shehk Md Faisal Kamal (the 'Landlord') applied for an order to terminate the tenancy and evict Md Tanvir Khalid and Rabeya Akter (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 June 17, 2024.

The Landlord, the Landlord's legal representative, Serajul Islam Kazi, and the Tenants attended the hearing.

**Determinations:**

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application is dismissed.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The rental unit is a two-bedroom apartment, with one washroom, located on the second floor of a condominium building.
4. On September 30, 2023, the Landlord gave the Tenants an N12 notice of termination with the termination date of November 30, 2023. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
5. The Landlord met the requirements under section 72(1) of the *Residential Tenancies Act, 2006* (the 'Act'), by filing with the Board a declaration signed by the Landlord that he requires the rental unit for his own personal use, in good faith, for a period of no less than one year.
6. It is undisputed that the Landlord has compensated the Tenants an amount equal to one month's rent by November 30, 2023 as required by s.48.1 and 55.1 of the Act which requires that the Tenants be compensated an amount equal to one month's rent by the termination date of November 30, 2023.

7. The Landlord testified that he lives in a three-bedroom apartment with his wife and four children (15, 12 and 10-year-old twins). His apartment is located on the seventeenth floor in the same building as the rental unit. He states that his apartment has one and a half washrooms. The main washroom in his apartment is small which makes it difficult when they have guests or family visiting or when someone in the family is ill. His intention is to occupy both units. He states that sometimes he will stay in the rental unit and other times his wife will stay there, depending on what guests they have staying with them. In other words, if his wife's family are staying with them, he will stay in the rental unit. If his family are visiting, his wife will stay in the rental unit.
8. The Tenants believe that the Landlord served the N12 notice in bad faith and that he is trying to evict the Tenants because he wants to increase the rent.
9. The Tenant, Khalid Md Tanvir, testified that in mid-January 2023, the Landlord told the Tenants that rent for a two-bedroom apartment had increased by \$500.00 to \$600.00 a month and that he would be increasing the rent accordingly. When the Tenants disputed the rent increase, the Landlord told the Tenants he would discipline them. After the Landlord served the N12 notice, he brought multiple real estate agents and people over to view the rental unit. The Tenant stated that the Landlord has been constantly harassing the Tenants to move out of the rental property.
10. Based on the evidence before me, I am not satisfied on the balance of probabilities that the Landlord intends to reside in the rental unit. I say this because the Landlord's testimony suggests that the only reason the Landlord requires the rental unit is to gain access to another washroom for his family and guests. He stated that either he or his wife will stay in the rental unit, depending on which guests they have staying with them. This suggests to me that if there are no guests staying with the Landlord, he and his wife will not be staying in the rental unit. Furthermore, given that guests are generally temporary, the Landlord's occupation of the rental unit is also likely temporary.
11. Section 48(1) of the Act only permits an N12 Notice of Termination to be served for the purposes of "*residential occupation*". The law is clear that "*residential occupation*" as it is used in s.48(1) of the Act (under which the Landlord served the N12 notice) does not include *temporary* full-time use.
12. The Ontario Divisional Court in the case of *MacDonald v. Richard* [2008] O.J. 6076 (Ont. Div. Ct.) ("MacDonald"), ruled that *temporary* full-time occupancy of a residential unit (which in MacDonald was four months) does not constitute "residential occupation" as contemplated in s.48(1) of the Act.
13. The Landlord's application is dismissed because the proposed occupation would not be residential occupation as required under the Act.
14. The Landlord has compensated the Tenants \$2,100.00 for serving the N12 Notice. In accordance with section 73.1 of the Act, the Tenants are required to pay back the compensation they received.

**It is ordered that:**

1. The Landlord's application is dismissed.
2. The Tenants will repay the \$2,100.00 compensation that they received from the Landlord.

3. If the Tenants do not pay the Landlord the full amount owing on or before September 7, 2024, the Tenants will start to owe interest. This will be simple interest calculated from September 8, 2024 at 7.00% annually on the balance outstanding.

**August 26, 2024**

**Date Issued**

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Karen Gonçalves

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.