



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

Citation: Broeders Sr v Miles, 2023 ONLTB 78172

Date: 2023-12-04

File Number: LTB-L-005232-23

In the matter of: 303 River Rd A.K.A County Rd 9
Napane Ontario K7R3K8

Between: Martin Broeders Sr Landlord

And

Jamie Miles Tenant
Tracey Miles

Martin Broeders Sr (the 'Landlord') applied for an order to terminate the tenancy and evict Jamie Miles and Tracey Miles (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.

This application was heard by videoconference on November 22, 2023.

The Landlord and the Tenant, Jamie Miles and Tracey Miles attended the hearing.

Determinations:

1. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The tenancy between the Landlord and the Tenant will be terminated.
2. The rental unit is a large two story side split fully detached home situated on 1.5 acres. The Tenant's rental unit is the upper level while the Landlord's son occupies the lower level. As the lower level is under renovations, the Landlord's son is currently living in an adjoining studio apartment until the renovations are completed.
3. On May 31, 2022, the Landlord gave the Tenant an N12 notice of termination for Landlord's own use. The termination date on the N12 notice is July 31, 2022.
4. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') by filing with the Board a declaration signed by the Landlord stating that in good faith he and his spouse require the rental unit for their own personal use for a period of at least one year.
5. Section 48.1 of the *Act* requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the *Act* requires this compensation to be provided no later than on the termination date specified in the notice of termination of the tenancy given by the landlord.

6. The Landlord testified that he provided cash to the Tenant on June 21, 2022 in the amount of \$1,920.00, one month's rent. The Tenant acknowledges that he received the compensation from the Landlord.
7. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenant with cash in the amount of \$1,920.00 to cover one month's rent for the compensation required for the N12 notice. I further find that by doing so, the Landlord has satisfied the requirement under s.48.1 that he "compensate" the Tenant.
8. The Landlord testified that he and his spouse want to move into the rental property as they are currently renting an apartment in the Oshawa area and wish to return to the Kingston area where they are originally from. The Landlord states that he moved to Oshawa to support his daughter who had health issues but now his son is requiring support and the rest of the Landlord's family is closer to the Kingston area.
9. The Landlord acknowledged that he owns another rental property, a condominium in Kingston, which he purchased as an investment 12 years ago. The Landlord states that he wishes to return to a country property. There is no mortgage on the rental property and it is much larger than the Landlord's current rental unit.
10. The Tenant Jamie Miles ('JM') states that he does not believe the Landlord genuinely intends to move into the rental unit because as there are renovations taking place, the Landlord would not let that money "go to waste" and is actually intending on re-renting the unit to get this renovation money back.
11. The Tenant states that they have been looking for another place to live but JM has health issues where he can no longer work and the Tenant Tracey Miles ('TM') left her employment to stay at home and assist JM. Both Tenants state they want to move out of the rental unit but require additional time. It was submitted that the Tenants have been in contact with Hastings Housing Resource Centre in Belleville, the area where they are hoping to move to, and have recently submitted applications for two units which would be available in the new year. The Tenants state that they are ready to move and showed on their camera moving boxes already packed within the unit.
12. The Tenant does not have any proof that the Landlord does not wish to reside in the rental unit and relies upon his belief that the money the Landlord has spent for the renovations would go to waste if he does not re-rent the unit at a higher amount.
13. The Landlord submits that the application has been brought in good faith and that he has a genuine intention is to live in the rental unit. The Landlord requests that the termination of the tenancy be in the spring, possibly March or April and asks for an eviction order.
14. The Tenants' position is that they are under financial strain, have health issues and seek at least 2-3 additional months to vacate the rental unit if the Landlord's application is granted.
15. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement pursuant to section 48(1) of the *Act* which states:

48(1) 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) a landlord;
- (b) the landlord's spouse;
- (c) a child or parent of the landlord or the landlord's spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile Home Park or land lease community in which the rental unit is located.

16. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that they genuinely intend to move into the rental unit.
17. The courts have provided much guidance to the Board in interpreting the "good faith" and "genuine intent" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
18. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

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

19. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The

fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

20. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

21. In this case, the Landlord testified that he and his spouse want to live in the rental unit for at least a one year period as it is closer to family, would be supporting their son and the Landlord wishes to return to his roots by living on a rural property.

22. Based on the evidence and submissions before me, I am satisfied that there is a genuine intention for the Landlord to move into the rental unit after the Tenant vacates the unit. While the Tenant offered reasonable suspicions, which are genuinely held by them, they remain mere suspicions. I am not satisfied that they are sufficient to cast doubt on the Landlord's intentions. The Landlord provided a declaration as required by the *Act* and the Landlord testified at the hearing regarding his intentions. I have no reason to doubt the truthfulness of the Landlord's testimony or his good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for their own residential occupation and that they genuinely intend to reside in the unit for at least one year.

23. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for their own purpose of residential occupation for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to deny the Landlord's application for eviction. For the following reasons, I find that it would be appropriate to evoke discretionary relief pursuant to section 83 of the *Act*.

24. The Tenant moved into the rental unit approximately three years ago. The Tenant stated that they are experiencing difficulty in finding accommodations within their budget and while they have been actively looking for somewhere else to move to, only recently submitted an application for two potential units to move to. The Tenants are waiting to hear if their application is successful and request an additional two to three months to vacate the rental unit. The Landlord states that he is prepared to work with the Tenants but hopes to move into the rental unit in the spring of next year.

25. I have considered both parties' position, including the length of this tenancy, the Tenants' difficulties in finding accommodations within their budget and while I recognize that the Tenant may experience some difficulties in locating alternative housing, the Landlord has the right to evict a Tenant for Landlord's own use so long as the Landlord genuinely requires the unit for the purpose of residential occupation which I have found. While the Landlord's current living situation is perhaps not ideal, he does have somewhere to live

and thus I find it would not be unfair to delay eviction. As such, I find that a delay of eviction is appropriate and will delay eviction until the end of February, 2024, as the Tenant requested 2-3 additional months to vacate at the hearing and as the Landlord indicated he would like possession of the rental unit in the spring of 2024.

26. After considering all of the disclosed circumstances of both of the parties, in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), I find that it would not be unfair to postpone the eviction until February 29, 2024 pursuant to subsection 83(1)(b) of the *Act* as this additional time will assist the Tenant in locating new accommodations.

27. This order contains all of the reasons within it and no further reasons will be issued.

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 February 29, 2024.
2. If the unit is not vacated on or before February 29, 2024, then starting March 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 March 1, 2024.
4. The Tenant shall also pay the Landlord compensation of \$64.77 per day for the use of the unit starting November 23, 2023 until the date the Tenant moves out of the unit.

December 4, 2023

Date Issued

Heather Chapple

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 September 1, 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.