



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

**Citation:** Winter v Mccrea, 2023 ONLTB 76600

**Date:** 2023-11-27

**File Number:** LTB-L-057941-23

**In the matter of:** Lower Unit, 7 FULTON AVE  
Toronto ON M4K1X6

**Between:** Sarah Winter Landlord  
Antonio Nunno

**And**

Deborah Mccrea Tenant

Sarah Winter and Antonio Nunno (the 'Landlord') applied for an order to terminate the tenancy and evict Deborah Mccrea (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 October 18, 2023.

The Landlords and the Landlords' Legal Representative, K. Lovett and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On July 18, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2023. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlord testified that they currently reside in Scarborough. In December 2022, the Landlord, A. Nunno went through some medical issues that inspired him to re-evaluate their priorities. The Landlords testified that they want a more urban lifestyle and want their 13-year-old twins to go to school in the neighbourhood. They also have family that live down the street from the rental unit.

5. Currently the Landlords live in Scarborough and the distance from work for S. Winter will be shorter and slightly longer for A. Nunno. The Landlord's testified that the rental unit requires less upkeep compared to their current home.
6. The Landlord testified that the rental complex is comprised of 2 units, and they require both to accommodate their family of four. The complex will be converted back to a single-family dwelling and the Landlords will reside in the unit with their two children for not less than a year.
7. The Tenant testified that she believes that the Landlords will give the appearance of moving into the rental unit at the very least. The Tenant did not put forth a reason for this belief other than to say that there is a history between the parties that lead to the service of the N12.

#### Analysis

8. The Courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a Landlord seeking possession of a rental unit for the purpose of residential occupation by the Landlord.
9. 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".

10. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the issue under subsection 51(1) of the Tenant Protection Act, 1997, S.O. 1997, c. 24. The court referred to *Feeney*, supra, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."

11. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Residential Tenancies Act, 2006, 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."

12. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving

a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.

13. I found the Landlord's testimony to be straight-forward and consistent. The Landlord testified that the upper unit tenants have already vacated the rental unit and renovations have commenced in order to accommodate the Landlord and his family. This is consistent with the Landlord's intention to move into the unit.
14. Although the Tenant believes that the Landlord will give the appearance of moving in, without any information to substantiate that belief, that allegation is just speculation.
15. There may have been a breakdown in the Landlord and Tenant relationship in this case, certainly, the Tenant alleges that this notice was served because of such a breakdown. However, based on the Landlord's testimony, I find on a balance of probabilities, that the Landlords, in good faith, intend to reside in the rental unit with their children for a period of at least one year.
16. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2023.
17. There is no last month's rent deposit.

#### Relief from eviction

18. The Tenant testified that she has resided in the unit for 18 years. She lives in the unit alone. She testified that she is quite anxious to vacate the rental unit and testified that she anticipates that she will have a new place to live as of November 30, 2023.
19. The Landlord was not opposed to terminating the tenancy as of November 30, 2023.
20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. Given the timing of this order, and both parties desire to terminate the tenancy as of November 30, 2023, no further delay other than the standard time shall be given.

#### 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 December 8, 2023.
2. If the unit is not vacated on or before December 8, 2023, then starting December 9, 2023, 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 December 9, 2023.

**November 27, 2023**

**Date Issued**

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Emily Robb

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 June 9, 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.