



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

**Citation:** Moreira v Deoni, 2023 ONLTB 74652

**Date:** 2023-11-14

**File Number:** LTB-L-053173-22

**In the matter of:** #9, 174 FELAN AVE  
OAKVILLE ON L6K2X5

**Between:** Sidonio Moreira Landlords  
Nelson Moreira

**And**

Steven Deoni Tenant

Sidonio Moreira and Nelson Moreira (the 'Landlords') applied for an order to terminate the tenancy and evict Steven Deoni (the 'Tenant') because:

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

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

This application was heard by videoconference on September 7, 2023.

The Landlords and the Tenant attended the hearing.

**Determinations:**

1. The Landlords served the Tenant with an N12 notice of termination alleging that they required the rental unit for the purpose of residential occupation for at least one year for S. Moreira's (SM) son, David Moreira (DM).
2. The monthly rent for the rental unit is \$960.00.
3. The termination date on the N12 notice of termination is April 30, 2023. The Landlords paid the Tenant compensation equivalent to one month's rent on April 15, 2023.

Preliminary Issue:

4. The Tenant submits that SM and N. Moreira (NM) are not his Landlords, because it is not they who own the residential complex.
5. The Landlords are brothers. The residential complex is an apartment building with 11 units. The residential complex is owned by the Landlords' mother. They said that they took over management and all Landlord duties of the complex when their father passed away in 2017. It is also to them that tenants of the building send their e-transfers for payment of the rent.
6. The Landlords said that SM carries out the maintenance and deals with contractors, while NM undertakes liaison with tenants, and provides keys and access to the unit when tenants commence their tenancy. NM said that they also interchange activities. NM said that his parents have owned the residential complex for 30 years, they have never had family live in the building before, and they have only evicted one tenant in 30 years.
7. I find that SM and NM are Landlords of the Tenant for the reasons that follow. The *Residential Tenancies Act, 2006* (the 'Act') defines a "Landlord" in subsection 2(1)(a) as "the owner of a rental unit or any person who permits occupancy of a rental unit...."
8. The Act does not require that a Landlord be an owner of the residential complex, but a Landlord is also, "any person who permits occupancy." SM and NM testified that they have taken over all management and maintenance, collection of rents, as well as all communication with Tenants since their father died. It is undisputed that the mother of SM and NM owns the residential complex, but she has no Landlord duties in the running, maintaining, leasing, collection of rents, provision of keys, and liaison with Tenants in the residential complex. Consequently, I am satisfied that it is NM and SM who are the individuals who "permit occupancy" of the rental units in the complex, and they fall within the Act's definition of Landlord.

L2 Application:

9. SM said that his son DM, 19 years old, currently lives with him in Bolton, which is approximately 1 hour from Oakville. He said that there are currently five people living in his residence, including two other children.
10. SM said that DM is now attending university at Sheridan College in Oakville, and it is only 5 minutes away from the rental unit. He said that it will be much easier for his son to commute to his college, and he will have a big saving on gas and tolls.
11. SM said that he will probably charge DM some rent so he knows "how the system works".
12. SM said that the Landlords chose the Tenant's rental unit because it is one of only five one bedroom units. He said that the rest of the 11 units are 2 bedroom units. He also said that

the Tenant presents them with the most problems of all the other tenants; they said he pays the rent late and he frequently short pays, so they prefer to have DM live in that particular one bedroom unit. They said that is why, if they had to pick one of the 1 bedroom units, they preferred the Tenant's.

13. SM said that they originally told the Tenant they would require his unit in September 2022, because DM was supposed commence his journalism course in January 2023. He said that DM was not accepted in January 2023, so they reissued an N12 notice of termination with a termination date of April 30, 2023. DM was to commence college in September 2023. As of the date of the hearing, SM said that DM has now started his college course.
14. SM said that they have been trying to help the Tenant move, and they even found a unit for him within 5 km of the rental unit, but he refused to move.
15. DM said that it is easier for him to live in the rental unit than remain where he is currently. He said that he now has to drive 90 minutes to attend his courses.
16. DM said that he is prepared to pay some rent as he took a gap year, he has savings, and he plans to get a part-time job. He said that his courses are in person over 3 days in the week. He said that he plans to live in the rental unit from 1 to 6 years.
17. The Tenant said that he has lived in the rental unit since 2005 on his own. He said that his income is ODSP of \$1,406.00 per month, and he also helps his mother, who lives in Port Credit. The Tenant said that he looked for other places to live but he finds them too expensive. He said that his main expenses are the rent, hydro, phone. He said that he uses his entire income for his monthly expenses, and he occasionally has to go to the food bank.
18. The Tenant said that the Landlords found an alternative unit nearby, but it was \$200.00 per month more rent, which was too expensive for him.
19. The Tenant said that he does not believe that DM is moving into his rental unit, and he believes the N12 notice of termination is "just an excuse to get rid of me". He said that he does not believe DM is moving in because he received an N12 from the Landlords in September of 2022.
20. The Tenant does not dispute that he received a copy of letter of acceptance to Sheridan College for DM.
21. The Tenant said that he wishes to remain in the rental unit because he has lots of friends in the neighbourhood and in the building, and it is close to his mother and many other amenities.

Reasons and Analysis:

22. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy.

23. The Tenant was in possession of the rental unit on the date the application was filed, and the one month's rent compensation has been paid.
24. It is undisputed that DM is now attending Sheridan college, which is very close to the rental unit. It is also undisputed that DM is currently living with his family in Bolton, which is 58 km away from the Oakville Sheridan campus.
25. The Landlords chose an appropriate unit. It is undisputed that DM will only require a 1 bedroom unit, and there are only 5 out of the 11 units in the building that are 1 bedroom.
26. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), a case in which the Landlord filed the application on the basis that he required possession of the rental unit for purpose of residential occupation by his adult son and the son's family, the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...
27. The case law in this area establishes that the test is determined by considering the intention of the person named in the application. If that person genuinely intends to reside in the unit, then the notice is given in good faith.
28. I find that the evidence supports, on a balance of probabilities, that DM genuinely intends to reside in the unit. He is attending a college nearby, and he does not want to have to commute over two hours back and forth on the 3 days out of 5 that he attends classes. His father said that he intends to charge DM some rent, and DM has thought about how to pay rent and also attend college. DM currently lives in his family home, and it is also reasonable that he is now seeking more independence away from his family as he begins to attend college.
29. The Tenant's only evidence to support his contention that DM does not genuinely intend to move into the rental unit is that he believes it is a ploy for the Landlords to get rid of him.
30. There is no evidence, documentary or other, to support the Tenant's allegation that DM is not moving in, and that the Landlords served the N12 with the sole intention of getting rid of the Tenant. The Landlords said that they have only ever evicted one other tenant in 30 years. They tried to help the Tenant find an alternative, suitable unit. The Landlords said that they harbour no animus towards the Tenant, and their testimony supports that contention. The Landlords openly admitted that they had only five units from which to pick a unit for DM, and since the Tenant pays the rent late and short, it was logical for them to choose the Tenant's unit. Choosing the Tenant's rental unit for the stated reason, in conjunction with my finding that DM genuinely intends to move into the rental unit for his own residential use for at least one year, does not fall into any of the categories listed in subsection 83(3) of the Act as a circumstance where refusal of eviction is required.

Section 83 Considerations:

31. The Tenant lives on a very limited income in an expensive housing market. He has lived in the rental unit for 18 years, and it is conveniently located for his needs. Although the Tenant has had over six months since the termination date on the N12 notice of termination, and DM has already commenced his college course, I find that it is not unfair to give the Tenant more time to find a suitable unit.
32. I have considered all of the disclosed circumstances above 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 January 31, 2024, pursuant to subsection 83(1)(b) of the Act.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2024.
2. If the unit is not vacated on or before January 31, 2024, then starting February 1, 2024, the Landlords 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 Landlords on or after February 1, 2024.
4. If the Tenant fails to move out of the rental unit on or before January 31, 2024, the Tenant shall pay the Landlord compensation of \$31.56 per day for the use of the unit starting February 1, 2024, until the date the Tenant moves out of the unit.

**November 14, 2023**

**Date Issued**

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Nancy Morris

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 August 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.