



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

**Citation:** Guo v Chheda, 2023 ONLTB 71214

**Date:** 2023-10-31

**File Number:** LTB-L-021493-23

**In the matter of:** 7667 GOLDENROD TRAIL  
NIAGARA FALLS ON L2H0K4

**Between:** Dianxi Guo Landlords  
Kejia Yang

**And**

Yagna Nimish Chheda Tenants  
Neeraj Kumar de Kaneria

Dianxi Guo and Kejia Yang (the 'Landlords') applied for an order to terminate the tenancy and evict Yagna Nimish Chheda and Neeraj Kumar de Kaneria (the 'Tenants') because:

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

This application was heard by videoconference on October 10, 2023. The Landlords, the Landlords' legal representative, J. Lambe, and the Tenant, N. de Kaneria, attended the hearing. Y. Chheda was not present at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. The Tenant had an opportunity to speak with Tenant Duty Counsel before the hearing.

**Preliminary Issue:**

1. The Landlords submits that the Tenants' evidence should be excluded because it was served and filed the morning of the hearing and it is irrelevant. The Tenant states that the reason it was late was because he did not know he had to re-serve evidence for this hearing that he already served and filed for a previous hearing. The Tenant's position was that the Landlords already had the evidence he was relying upon.

2. The Landlords' request was denied. I am satisfied that the evidence was not submitted until the morning of the hearing because the Tenant did not understand that he had to resubmit evidence for this application. The Landlords did not deny having reviewed the evidence before the hearing. While the Landlords argue that this evidence is irrelevant, pursuant to the *Statutory Powers Procedure Act, 1990*, I can exclude any evidence that is irrelevant, which can be assessed during the merits of the application. As such, the Landlords were advised that they could raise objections to the evidence throughout the hearing.

### **Determinations:**

3. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on December 31, 2023.
4. The Tenants were in possession of the rental unit on the date the application was filed.

### **N12 Notice of Termination**

#### **Landlords' Own Use**

5. On March 9, 2023, the Landlords gave the Tenants an N12 notice of termination with the termination date of May 31, 2023. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords.
6. The Landlords have compensated the Tenants an amount equal to one month's rent by May 31, 2023. The Tenant testified that compensation was given via e-transfer, but they returned it because they assumed it was an error. I am satisfied that the Landlords met their obligation to pay compensation to the Tenants before the termination date.
7. The Landlords filed a declaration which states that they require the rental unit for their own residential occupation for a period of at least one year.
8. The Landlords bear the obligation to prove the good faith requirement and is required to establish that the person purporting to live there genuinely intends to live in the rental unit for at least one year. The Landlords' motives are only relevant as evidence from which inferences can be drawn when deciding whether a genuine or sincere intention to occupy the unit exists.<sup>1</sup>
9. The Landlord testified that he currently resides with his wife in his daughter's house with his daughter, son-in-law and grandson. The conditions are cramped, and this is negatively affecting his wife's health. The Landlord and his wife recently received their Permanent Residence status in Canada and will be living in the rental unit full-time and indefinitely.

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<sup>1</sup> *Fava v. Harrison*, [2014] O.J. No. 2678 (Div. Ct); *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.)

Submitted into evidence was a copy of Kejia Yang's (KY) medical certificate, which was officially translated from Chinese. The medical certificate identified KY's diagnosis and that she requires to recuperate in a quiet and relaxed environment. Also submitted into evidence were documents titled, "Confirmation of Permanent Residence" for both named Landlords.

10. The Tenant disputed the Landlords' good faith intent. He testified that this is his third time receiving a notice of termination. The Landlord first communicated to the Tenants in June 2021 of his intent to sell. He received an N12 Notice with a termination date of August 1, 2021 for Landlord's own use. He received another N12 Notice with the termination date of August 31, 2022 for the Landlord and spouse's own use. The Tenant was also confused as to why the Landlord wanted to reside in the Tenants' particular unit as they own many units. As such, the Tenants believe that the Landlords want the Tenants to vacate so that they could double the rent. In addition, the Tenant submitted that the Landlords are not permanent residents so they cannot reside in the unit for one year. Submitted into evidence

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were text messages between the Tenant and the Landlord's daughter regarding the rent charged at the rental unit being insufficient for the Landlords.

11. While the Tenant states the Landlord communicated to him their intent to sell, I am not satisfied that this conversation that took place two years ago establishes that this is the Landlords' current objective. In addition, whether or not the Landlords have other options for residential occupation is not determinative of their genuine intent to occupy the rental unit.
12. I find that the Landlords genuinely intend to reside in the rental unit for a period of at least one year. I base this on the Landlord's believable and credible testimony and the supporting documents. I also note that the two previous notices of termination served on the Tenants identify that the Landlord requires the rental unit. This is consistent with the Landlord's oral testimony at the hearing.
13. Therefore, I am satisfied that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year.

### **Relief from eviction**

14. 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 December 31, 2023 pursuant to subsection 83(1)(b) of the Act.
15. The Tenant testified that he resides in the rental unit with his wife and daughter. His daughter goes to French Immersion school in the area and as such, he needs until the end of summer 2024 to make arrangements for her school. The Landlords submit that they require the rental unit as soon as possible due to KY's medical condition.

16. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy to provide the Tenants with some time to organize their move. A longer delay will not be granted given KY's health.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated, as of December 31, 2023. The Tenant must move out of the rental unit on or before December 31, 2023.
2. If the unit is not vacated on or before December 31, 2023, then starting January 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 Landlord on or after January 1, 2024.

**October 31, 2023**

**Date Issued**

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Camille Tancioco

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 Tenants expires on July 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.

