



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

**Citation:** Zauritz v Fagnoli, 2023 ONLTB 68313

**Date:** 2023-10-23

**File Number:** LTB-L-011331-22

**In the matter of:** 2, 567 HILL ST  
LONDON ON N6B1E9

**Between:** Federico Zauritz Landlord

**And**

Robin Fagnoli Tenant

Federico Zauritz (the 'Landlord') applied for an order to terminate the tenancy and evict Robin Fagnoli (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.

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

This application was heard by videoconference on October 5, 2023.

Only the Landlord, Landlord's witness Antonia Goncales and the Landlord's Legal Representative T. Schoenleber attended the hearing.

As of 1:42 p.m., the Tenant was not present or represented 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. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated as of November 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On December 16, 2021, the Landlord gave the Tenant an N12 notice of termination deemed served the same day with the termination date of February 28, 2022. The

**File Number:** LTB-L-011331-22

Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by Landlord's mother-in-law.

#### *Good Faith*

4. For the reasons set out below, I find the Landlords in good faith requires possession of the rental unit for the purpose of his mother-in law's residential occupation for a period of at least one year.
5. The Landlord testified that they started the N12 process in 2020 when his mother-in-law got her paperwork approved to move to Canada permanently. The last application was dismissed after a hearing held on December 7, 2021 as the member found that compensation had not been paid
6. The Landlord testified that they submitted all the visa paperwork and flight tickets as evidence that his mother-in-law is currently living with him and his wife. The Landlord further added that his mother-in-law likes to live independently on her own. He also added that their current house has stairs which is difficult for her whereas the rental unit is a single level one-bedroom apartment which is easy for her to live in. She has a pension from Brazil for everyday expenses and she would not be paying rent to the Landlord. The rental unit is close to their residence so his wife can be of assistance if required.
7. The Landlord's mother-in-law Ms. Goncalves also testified that she would like to live at the rental unit independently and that she would live there for more than a year. She would like to move in as soon as the rental unit is vacated, and after some minor repairs are completed.
8. The Landlord submits that a long time has passed since the application process was originally started and it would be highly prejudicial to delay this further.

#### *Analysis*

9. In the leading case law involving a Landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), 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...”

10. Thus, the Landlord must establish that they genuinely intend to move into the unit. The Court also held in *Salter v Beljinac* that the Landlords' motives are "largely irrelevant".
11. Based on the uncontested evidence, I find that the Landlords proved that it is more likely than not that her mother-in-law, in good faith requires the rental unit for the purposes of residential occupation. Specifically, I accept that Antonia Goncalves genuinely intends to

**File Number:** LTB-L-011331-22

occupy the rental unit for a period in excess of one year. I found her and the Landlord's testimony to be credible and reliable.

#### *Compensation*

12. The Landlords has compensated the Tenant an amount equal to one month's rent on February 24, 2022 via e-transfer.
13. The Landlord testified that the Tenant is up to date on rent.
14. There is no last month's rent deposit.

#### *Relief from eviction*

15. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
16. I am giving the Tenant extra time since this is a long-standing tenancy, and the delay will give the Tenant adequate time to find another suitable accommodation.

#### **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 November 30, 2023.
2. If the unit is not vacated on or before November 30, 2023, then starting December 1, 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 1, 2023.
4. The Tenant shall pay the November 2023 rent by November 1, 2023 since there is no last month's rent deposit.

**October 23, 2023**

**Date Issued**

Sheena Brar

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 April 28, 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.

2023 ONL TB 68313 (CanLII)