



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

**Citation:** Butera v Gomes, 2023 ONLTB 56464

**Date:** 2023-08-11

**File Number:** LTB-L-057300-22

**In the matter of:** TOP FLOOR, RM 1, 4 CHAPEL RD  
ETOBICOKE ON M8W1G1

**Between:** Vincenzo Butera Landlord  
Gay Chisholm

**And**

Carlito Gomes Tenant

Vincenzo Butera and Gay Chisholm (the 'Landlord') applied for an order to terminate the tenancy and evict Carlito Gomes (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 April 17, 2023.

The Landlord, Landlord's representative Roman Andrzejewski and the Tenant attended the hearing.

**Determinations:**

1. This is an L2 application based on an N12 to terminate the tenancy and evict the Tenant because the Landlord requires possession of the rental unit for the purpose of residential occupation. The termination date on the N12 was November 30, 2022 and the Tenant was handed the N12 on September 30, 2022.
2. The Tenant have lived in the rental unit since 2006.

3. The Landlord collected a rent deposit of \$500.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$141.25 is owing to the Tenant for the period from November 1, 2006 to April 17, 2023 .
4. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.
5. The Landlords compensated the Tenants an amount equal to one month's rent by September 30, 2022 as required by sections 48.1 and 55.1 of the Act and the affidavit required by section 72(1.1) of the Act.

## **Good Faith**

### Landlord's Evidence

6. The Landlord testified that they want to downsize; to do this, they want to move into the rental home and sell their own property. The Landlord explained that they want to move into this triplex unit to accommodate their two adult children, a 30-year-old son and a 29-year-old daughter, who live with them. Additionally, the son's girlfriend also resides with them, and it is deemed more suitable for everyone since each individual has their own space. This decision was due to financial constraints, as the children could not afford rent.
7. The Landlord testified that he took a mortgage to purchase the rental and still has a mortgage on his current home. The Landlord claims he overspends about \$5,000 monthly and must move into the rental unit immediately. The Landlord explained that he had listed the existing house for \$ 1.5 million and provided a copy of the listing as evidence to show his home is up for sale. The Landlord claims he wanted to move in immediately after he purchased the rental unit, but because the Tenants refused to move out, he rented the upper-level rooms to students whose tenancy will end in May 2023.

### Tenant's Evidence

8. The Tenant claims he has resided in the unit since 2006. The Tenant claims that the Landlord had discussed with him about continuing to use this property rental unit before purchasing the unit. The Landlord changed his mind about moving into the rental unit with him and his spouse occupying the upper floor, the daughter occupying the main floor, and the son occupying the basement. The Tenant alleges that the Landlord's inconsistent actions indicate a desire to force them to vacate the unit to re-rent it at a higher price, reflecting the current housing market and the debt acquired to purchase the rental property. The Tenant also claims that he occupies the upper unit with one student in room # 2 and the occupant in room # 3, who is not a student, as claimed by the Landlord. The Tenant claims the Landlord's daughter did not sign the affidavit, as the Act requires.

### Analysis

9. Section 48(1) of the Residential Tenancies Act, 2006 (the 'Act') provides that a landlord may give notice of termination "... if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation by . . . the landlord".
10. The leading decision concerning applications for termination of a tenancy for landlord's own use is the Divisional Court decision of *Beljinac v. Salter* (June 15, 2001), Toronto Docket No. 715/00, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.) Re: TSL-21378. The Court found that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal.
11. Further, the Court found in *Fava v Harrison*, 2014 ONSC 3352, that the landlord's motive for moving is mostly irrelevant but Board can consider the "conduct and motives of Landlord" to draw inferences of whether the unit is required in good faith.
12. Based on the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intentions. Although the Landlord may have discussed with the Tenant his intention to keep the rental unit before purchasing the triplex, this does not indicate bad faith. It points more towards the Landlords canvassing all of their options, and albeit an unusual and confusing way to go about things, it does not establish bad faith.
13. Further, the evidence shows that this application under section 69 of the Act is based on section 48(1) for Landlord's use and not S.49(1) purchaser's own use. Therefore, the Tenant's position to dismiss the application since the triplex has more than three residential units does not apply.
14. On the balance of probabilities, I am therefore satisfied that the Landlord, in good faith, requires possession of the rental unit for residential occupation and that they and their children genuinely intend to reside in the rental unit for one year. I find the Landlord's evidence credible and their testimony believable and consistent internally and externally. The Tenant's submissions did not provide any evidence to the contrary or contradict the Landlord's evidence.

### **Relief from eviction**

15. The Landlord requested that the tenancy between the Landlord and the Tenant be terminated by standard order. The Tenant requested additional time to vacate the unit.
16. 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 September 31, 2023 pursuant to subsection 83(1)(b) of the Act, to give the Tenant sufficient time to find alternative housing as the Landlord demonstrated an urgency take possession of the unit.

### **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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 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 October 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$8.88 per day for the use of the unit starting October 01, 2023 until the date the Tenant moves out of the unit.

**August 14, 2023**

**Date Issued**

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Percy Laryea

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 March 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.

