



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

**Citation:** Mushtaq v Malik, 2023 ONLTB 54814

**Date:** 2023-08-08

**File Number:** LTB-L-021283-23

**In the matter of:** Upper Level-267 Checkerberry Crescent  
Brampton, ON L6R 3P6

**Between:** Shoaib Mushtaq Landlords  
Rakhshanda Kausar

**And**

Jalil Omer Malik Tenant

Shoaib Mushtaq and Rakhshanda Kausar (the 'Landlords') applied for an order to terminate the tenancy and evict Jalil Omer Malik (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 June 26, 2023.

The Landlord Shoaib Mushtaq, the Landlord's Legal Representative Samila Waslat, the Landlord's brother Ashsaq Ahmed ('AA'), the Tenant and the Tenant's Legal Representative Idrees Khan attended the hearing.

**Determinations:**

1. As explained below, the Landlords have 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 September 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 7, 2023, the Landlords gave the Tenant an N12 notice of termination deemed served that same date with the termination date of May 10, 2023. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlord testified that at the time he swore his declaration with respect to this application, that he and his family were living at 89 Deer Ridge Trail in Caledon, which is currently the Landlord's uncle's and his family's primary residence. The Landlord testified that he is now living with his brother at 94 Checkerberry Crescent in Brampton, which is near the subject property.

5. The Landlord testified that he and his wife purchased the property in 2021 but did not move into the unit at the time. The Landlord testified that he moved from his uncle's residence at the end of March 2023 and is now currently living at his brother's home, where he has one room for his whole family, which he testified is affecting him and his family's mental health.
6. The Landlord testified that he is also on title for another property, which is currently co-owned and being resided by the Landlord's sister. The reason this fact was brought into evidence was that the Landlord had appeared as the landlord on a separate application involving his sister's property.
7. AA testified on behalf of the Landlord and testified that he assists his brother with property management due to his difficulties with English. AA testified that he did request a rent increase from the Tenant that was beyond the permitted amount however, he testified that once he had received legal advice he requested only the permitted 1.2% and when the Tenant refused, he never followed up on the request.

### *Analysis & Findings*

8. The Tenant's Legal Representative raised the following issues with respect to the Landlord's application; that the declaration provided with the Landlord's application is false because the Landlord was living at his brother's when it was sworn; that the Landlord wants to evict the Tenant for refusing a rent increase beyond the permissible amount, that the Landlord and his family have multiple properties that can be used for his family, and that the Landlord appeared as a landlord for an application involving his sister's property.
9. Section 72(1) of the *Residential Tenancies Act, 2006* (the 'Act') states that the Board shall not make an order terminating the tenancy unless the landlord has filed with the Board *an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or own personal use for a period of at least one year*. I have emphasized this section to clarify precisely what is required in the affidavit.
10. Despite the fact that I accept that the Landlord was living at his uncle's residence when he swore the affidavit, even if that may not have been the case I do not find that information to have been germane to the requirements of the affidavit as required under s. 72(1).
11. Further, while the Divisional Court case of *Fava v. Harrison*, 2014 ONSC 3352 states that the Board can consider the conduct and motives of the landlord in order to draw inferences as to whether a landlord desires in good faith to occupy the property, I do not draw a negative inference by the Landlords' request for a rent increase above the permitted guideline. The request was denied, and the Landlord never followed up on the request.
12. Further, the Divisional Court case of *Salter v. Belijinac*, 2001 CanLII 402231 (ON SCDC) states that the Board is to determine evidence that is relevant to the landlord's good faith intentions to move into the unit however, the Board stops short in entering an analysis of the landlord's various options.
13. While it may very well be possible that the Landlords and their family may have access to another space within the properties that are owned by the Landlords and their family, the

Landlords are seeking to move into the subject unit because the unit has three bedrooms and provides the required amount of space for his family, specifically.

14. Further, with respect to the Landlord having appeared as a landlord on an application involving his sister's property, the Landlord did testify that he is on title for the property in question but besides that point, the definition of "landlord" under s. 2 of the Act is quite broad and includes the owner of a rental unit, or any person who permits occupancy of a rental unit. The definition goes on to further state that a landlord is an individual who attempts to enforce any rights of a landlord, including the right to collect rent.
15. As such, I see no issue with the Landlord appearing as a landlord with respect to a separate application involving a separate unit that he has an interest in.
16. On a balance of probabilities, I am satisfied that the Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
17. The Landlords have compensated the Tenant an amount equal to one month's rent by May 10, 2023. Rent was waived for the period beginning March 11, 2023, to April 10, 2023. The Tenant was made aware of this by a letter sent to the Tenant from the Landlord's Legal Representative on March 7, 2023.

#### *Daily Compensation*

18. The Tenant was required to pay the Landlords \$3,863.01 in daily compensation for use and occupation of the rental unit for the period from May 11, 2023 to June 26, 2023.
19. Based on the Monthly rent, the daily compensation is \$82.19. This amount is calculated as follows: \$2,500.00 x 12, divided by 365 days.
20. The Landlords collected a rent deposit of \$2,500.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$105.68 is owing to the Tenant for the period from April 11, 2021 to June 26, 2023 .
21. 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.

#### *Section 83 Considerations*

22. The Tenant testified that he has two children, one who is 1 ½ years old. As such, eviction will be ordered but will be delayed to allow the Tenant to find a new unit.
23. 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 30, 2023 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 September 30, 2023.

2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 2023, 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 October 1, 2023.
4. The Tenant shall pay to the Landlords \$3,863.01, which represents compensation for the use of the unit from May 11, 2023 to June 26, 2023.
5. The Tenant shall also pay the Landlords compensation of \$82.19 per day for the use of the unit starting June 27, 2023 until the date the Tenant moves out of the unit.
6. The Landlords owe \$2,605.68 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
7. The total amount the Tenant owes the Landlords is \$1,257.33.
8. If the Tenant does not pay the Landlords the full amount owing on or before September 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from October 1, 2023 at 6.00% annually on the balance outstanding.

**August 8, 2023**

**Date Issued**

\_\_\_\_\_  
Jagger Benham  
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 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.