



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

**Citation:** Erika Nicole Fairservice v Brendan Dove, 2023 ONLTB 46408

**Date:** 2023-07-10

**File Number:** LTB-L-009041-23

**In the matter of:** BASEMENT, 302 EAST 27TH ST HAMILTON  
ON L8V3G6

**Between:** Erika Nicole Fairservice Landlord

**And**

Brendan Dove Tenant

Erika Nicole Fairservice (the 'Landlord') applied for an order to terminate the tenancy and evict Brendan Dove (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.

This application was heard by videoconference on June 13, 2023. The Landlord attended the hearing. As of 12:37 pm, 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. Therefore, the tenancy is terminated and the Tenant must move out of the rental unit on or before July 21, 2023.
2. On October 30, 2022 the Landlord served the Tenant an N12 Notice of Termination (N12) with the termination date of December 31, 2022. The Landlord claims that she requires vacant possession of the rental unit for the purpose of her own residential occupation. The Landlord applied to the Board to terminate this tenancy on January 29, 2023.
3. The Landlord testified that this is a month-to-month tenancy with a monthly rent of \$1,200.00 paid on the first day of each month, and that the Tenant remains in possession of the rental unit. The Landlord stated that there is no last month's rent deposit.

## Compensation

4. Section 48.1 of the *Residential Tenancies Act, 2006* (the “Act”) requires a landlord to compensate a tenant in an amount equal to one month’s rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for

**File Number:** LTB-L-009041-23

the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.

5. The Landlord testified that one month’s rent compensation was paid to the Tenant by waiving one month’s rent for the month of November 2022. The Landlord testified that this compensation was communicated to the Tenant through a receipt and note left in the Tenant’s mailbox on November 2, 2022. The Landlord remarked that the Tenant never acknowledged receipt of this note or that compensation was provided; however, the Tenant never paid rent for the month of November 2022.
6. On the basis of the Landlord’s uncontested evidence, I am satisfied that the Landlord paid the Tenant compensation equal to one month’s rent in accordance with sections 48.1 and 55.1 of the Act by waiving the rent for the month of November 2022.

## Good Faith

7. The N12 was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 the Landlord required, in good faith, the unit for residential use.
8. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord’s proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the “good faith” requirement simply means that the Landlord sincerely intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord’s notice.
9. In the more recent case of *Fava v. Harrison*, 2014 O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per Salter, “largely irrelevant”, the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the property.

10. The Landlord testified that in June 2022 she served a previous N12 to the Tenant for the same reason as the current N12; however, she never filed an L2 with the Board because the Tenant, during a conversation with her in August 2022, agreed to vacate the unit in September 2022. The Landlord noted that the Tenant never vacated the unit in September 2022, and that prompted her to serve the current N12, and to file an L2 application with the Board.
11. The Landlord testified further that the residential complex is a single detached bungalow with the Tenant residing in the basement unit, while she resides on the main floor. The Landlord explained that in March 2022 she sustained an injury that prevented her from working full-time, and as a result, she experienced financial hardship. To generate more income, the Landlord plans to move into the basement unit, and rent the main floor unit. The Landlord stated that she offered the main floor unit to the Tenant in June 2022, but the Tenant told her that he could not afford the higher rent of the main floor unit.
12. Pursuant to s. 72(1)(a) of the Act, the Landlord provided a signed declaration, dated March 30, 2023, declaring her good faith intention to reside in the rental unit for her own personal

**File Number:** LTB-L-009041-23

use for a period of not less than one year. The Landlord testified that it is her intent to live in the basement unit for three years or more.

13. On the basis of the Landlord's uncontested evidence, I am satisfied that the Landlord genuinely intends to use the rental unit for her own personal residence for at least one year. I therefore find that the Landlord in good faith requires 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 Act, and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
15. The Landlord testified that she was not aware of any circumstances that should be considered in a determination of whether to provide the Tenant with eviction relief, nor was the Tenant or his representative present at the hearing to provide submissions with respect to the Tenant's relief from eviction. For these reasons, it would be unfair to the Landlord to grant the Tenant with eviction relief.

**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 July 21, 2023.
2. If the unit is not vacated on or before July 21, 2023, then starting July 22, 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 July 22, 2023.

**July 10, 2023**

**Date Issued**

\_\_\_\_\_  
Frank Ebner

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 January 22, 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.