



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

**Citation:** Charles Lambrick v Bill Clark, 2023 ONLTB 46417

**Date:** 2023-07-05

**File Number:** LTB-L-014396-23

**In the matter of:** 1181 Partington Avenue  
Windsor Ontario N9B2P3

**Between:** Charles Lambrick Landlord

**And**

Bill Clark Tenants Shannon Higgins

Charles Lambrick (the 'Landlord') applied for an order to terminate the tenancy and evict Bill Clark and Shannon Higgins (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on June 13, 2023. The Landlord, the Landlord's representative, Tim Currie, and Tenant Bill Clark attended the hearing.

**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 and the Tenants must move out of the rental unit on or before July 16, 2023.

**N12 Notice of Termination – Landlord's Own Use**

2. On November 15, 2022, the Landlord served the Tenants an N12 notice of termination. The Landlord claims that he requires vacant possession of the rental unit for the purpose of his own residential occupation. The Landlord applied to the Board to terminate this tenancy on January 20, 2023. I find that the Landlord's application complied with s. 69(1) of the *Residential Tenancies Act, 2006* (the 'Act').

## Compensation

3. Section 48.1 of 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 the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.
4. The Landlord testified that he paid the Tenants one month's rent compensation of \$1,400.00 through an e-transfer on November 17, 2022. The Tenant testified that he received the e-transfer of \$1,400.00 from the Landlord.
5. On the basis of the evidence provided, I am satisfied that the Landlord met his obligation to pay the Tenants compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act, by providing an e-transfer payment to the Tenants of \$1,400.00 on November 17, 2022 – before the date of termination of January 31, 2023.

## Good Faith

6. The N12 was served pursuant to s. 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.
7. 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.
8. 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.

## Landlord's Evidence

9. The Landlord testified that he is currently living with his brother and that this living arrangement has become increasingly acrimonious as a result of disagreements that he has with his brother. The Landlord stated that his brother has recently met a woman, and now his brother wants his residence to himself. As result, the Landlord noted, he would like to move into the rental unit – a two storey single detached house. The Landlord

remarked that he is a professional entertainer who travels for work, and that the rental unit is equally convenient as his brother's residence for work purposes.

10. The Landlord stated that on January 28, 2022 he served a previous N12 to the Tenant for his own use of the unit; however, he did not pay the Tenant one month's rent compensation before the date of termination of March 31, 2022, and consequently, his L2 application LTB-L-026050-22 was subsequently dismissed during a Board hearing. The Landlord stated further that he then restarted the process by serving the current N12 and filing the current L2 application.
11. Pursuant to s. 72(1)(a) of the Act, the Landlord provided a signed declaration, dated January 2, 2023 declaring his good faith intention to reside in the rental unit for his own personal use. However, this declaration did not specifically state that the Landlord intended to reside in the rental unit for a period of at least one year. During the hearing the Landlord testified that he in good faith intended to reside in the rental unit for a period of more than one year. I accepted the Landlord's testimony, and pursuant to s. 212 of the Act, find that the Landlord has substantially complied with the requirements of s. 72(1)(a) of the Act.
12. The Landlord testified further that the Tenant has resided in the unit since April 2015, and since that time his relationship with the Tenant has been amicable; however, after he served the Tenant the N12 in November 2022 the Tenant no longer responds to his calls or text messages.

#### Tenant's Evidence

13. The Tenant testified that he believes the Landlord will move into the rental unit, and that the Landlord's application has been filed in good faith.

#### Analysis

14. On the basis of the evidence provided, I am satisfied that the Landlord genuinely intends to use the rental unit for his own personal residence for at least one year. I am satisfied that the Landlord's previous N12 does not demonstrate bad faith from the Landlord with respect to the Landlord's current application. 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.

#### **Daily Compensation & Rent Deposit**

15. The Landlord testified that this is a month-to-month tenancy with a monthly rent of \$1,400.00 paid on the first day of each month, and that the Tenants remain in possession of the rental unit.

16. The Landlord testified that the Tenants have not made any rent payments since the termination date of January 31, 2023. The Tenant testified that he has not paid any rent from February 1, 2023 to the day of this hearing.
17. The Tenants were required to pay the Landlord \$6,121.99 in daily compensation for use and occupation of the rental unit for the period from February 1, 2023 to June 13, 2023.
18. Based on the monthly rent, the daily compensation is \$46.03. This amount is calculated as follows: \$1,400.00 x 12, divided by 365 days.
19. The Landlord collected a rent deposit of \$850.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$113.99 is owing to the Tenants for the period from April 15, 2015 to June 13, 2023.
20. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

### **Relief from Eviction**

21. 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.
22. The Tenant testified that his partner, the other Tenant, no longer resides in the unit, and that he does not really want to stay in the unit because it is too large just for himself. The Tenant remarked that he has been looking for an alternate rental unit, but he is unable to find an affordable unit. The Tenant noted that he is currently not working, but he has applied for a property management position, and needs approximately 30 to 60 days to organize his affairs before any potential eviction.
23. On the basis of the evidence provided, I am satisfied that the Tenant is not motivated to retain his tenancy; however, with no current employment income, and high rental prices for alternate units, the Tenant wishes to extend his tenancy as long as possible. I am also satisfied that the Tenant has not paid rent since January 31, 2023, and given the Tenant's unemployment, the prospect of the Landlord receiving rent remains low. I find that this tenancy, as of the day of this hearing, is not financially feasible for the Tenant. I also accept that the Landlord's continued residence in his brother's home is causing a deterioration of their relationship. For these reasons, I find that postponing the termination of the tenancy would result in undue financial and emotional hardship for the Landlord. Accordingly, I find that 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 Tenants is terminated. The Tenants must move out of the rental unit on or before July 16, 2023.

2. If the unit is not vacated on or before July 16, 2023, then starting July 17, 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 17, 2023.
4. The Tenants shall pay to the Landlord \$5,158.00, which represents compensation for the use of the unit from February 1, 2023 to June 13, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
5. The Tenants shall also pay the Landlord compensation of \$46.03 per day for the use of the unit starting June 14, 2023 until the date the Tenants move out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before July 16, 2023, the Tenants will start to owe interest. This will be simple interest calculated from July 17, 2023 at 6.00% annually on the balance outstanding.

**July 5, 2023**

**Date Issued**

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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 17, 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.

