



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

**Citation:** Irvine v Chukil, 2023 ONLTB 42598

**Date:** 2023-06-08

**File Number:** LTB-L-062397-22

**In the matter of:** Basement, 6482 Erwin Crescent Niagara  
Falls Ontario L2G4Z8

**Between:** Heather Irvine Landlord

**And**

Michael Chukil Tenant

Heather Irvine (the 'Landlord') applied for an order to terminate the tenancy and evict Michael Chukil (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 March 22, 2023.

The Landlord, the Landlord's support, Donna Richardson, the Tenant and the Tenant's representative, Mikayla Mucciarelli attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application shall be granted and the tenancy is terminated effective July 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On June 30, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation.

4. The Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022.
5. The Landlord collected a last month rent deposit of \$475.00 from the Tenant on January 1, 2016 and this deposit is still being held by the Landlord.
6. Interest has not been paid on the last months rent deposit since it was collected.

#### GOOD FAITH

7. The N12 was served pursuant to Section 48(1) of the *Residential Tenancies Act, 2006*, (the Act) which states in part:

48 (1) A landlord may, by notice, terminate a tenancy if 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 by,

(a) landlord

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 a sincere 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."

#### Evidence

10. The Landlord testified that she lives in the upper unit of the home and intends to use the basement for her own personal use. She told the Board that she has rented her basement for 20 years to assist with paying the mortgage. The Tenant stated that although renting over the years has assisted her financially, she sacrificed her privacy and being a single woman with some health problems, she no longer wants to be a landlord.
11. The Landlord told the Board that, she hopes to retire in the near future and does not dispute that she was considering selling her home, however, after further consideration she has decided to delay selling her home for four to five years. She indicated that she has no intention of re-renting the basement unit.
12. The Tenant disputed the Landlord's testimony, stating that he believes her intention is to sell the property as per the first handwritten notice he received.
13. The Tenant provided evidence to the Board which illustrates his attempts to secure an alternative rental unit, his application for housing support, and his monthly income

statements. For the most part, the Tenant's evidence was with regard to relief from eviction which is addressed below.

### Analysis

14. I am persuaded by the Landlord's testimony and declaration that the Landlord in good faith requires the rental unit for residential occupation/personal use for a period of one year. Although the Landlord may have previously contemplated selling the rental property, I accept her testimony that she has decided to put those plans on hold for 4-5 years. I also accept that the Landlord's circumstances are such that she wants her privacy and no longer wants to be a landlord.
15. Based on the evidence and testimony before the Board, I find that the Landlord has established on a balance of probabilities that she genuinely intends to occupy the rental unit for at least one year. Therefore, the Landlord in good faith requires possession of the rental unit for a period of at least one year.

### RELIEF FROM EVICTION

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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
17. The Tenant has applied for housing support from Niagara Regional Housing, due to his limited income. He told the Board that he is 71 years old and relies on CPP and Old Age Pension and has lived in this rental unit since 2016. The Tenant stated that landlords are looking young female tenants and the increase in the cost of rent he has presented significant barriers in securing alternative housing. At the hearing the Tenant requested 1 year to find alternative accommodation.
18. I find that, although the Landlord in good faith requires possession of the rental unit, postponing the eviction until July 31, 2023 will provide the Tenant with more time to secure a rental unit given the challenges he is experiencing.
19. I have also taken into consideration the negative impact the current living situation is having on the Landlord.
20. Given the time since the hearing, the Tenant has effectively been given the extension of time to find alternative accommodations. However, in consideration of both parties' circumstances, I find this termination date to be appropriate. The Tenant has been granted addition time to secure a rental unit and the delay is not so lengthy that would prejudice the Landlord.
21. This Order contains all the reasons for this matter. No further reasons will issue

**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 31, 2023.
2. The Landlord shall apply the last months rent deposit and any interest owing on the last months rent deposit to the last month of the tenancy (July 2023).
3. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 August 1, 2023.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**June 8, 2023**

Natalie James

  
**Date Issued**

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 February 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.

