



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

**Citation:** Klippenstein v Pace, 2023 ONLTB 34916

**Date:** 2023-05-04

**File Number:** LTB-L-043137-22

**In the matter of:** Upper, 194 TALBOT ST E  
Aylmer ON N5H1H7

**Between:** Henry Klippenstein Landlord

**And**

Kelly Irvine, Theodore Pace Tenant

Henry Klippenstein (the 'Landlord') applied for an order to terminate the tenancy and evict Kelly Irvine and Theodore Pace (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

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 January 31, 2023.

The Landlord and the Landlord's Legal Representative, K. Cronk. and the Tenants and the Tenant's Legal Representative, L. Branje attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Tenants disputed proper service of the N12 notice of termination, testifying that they do not use the mailbox that the N12 was placed in. The testified that they only monitor the Canada post mailbox which is a block away from the Tenant's house.
4. The rental unit is part of a duplex that has 2 mailboxes in the common area, one for each unit in the complex. The notice was placed in that mailbox. The certificate of service allows for the document to be served by placing it in the mailbox. I am satisfied that the Tenant's were properly served with the N12 notice.

5. On July 29, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation.

### Good Faith

#### Landlord's evidence

6. The purchaser, B. Fehr testified that he intends to move into the unit. He testified that he has signed an agreement of purchase and sale, but the property has not closed yet because part of the agreement requires the unit to be vacant. He testified that he will need to do some renovations before he moves into the unit but intends to live in the unit.

#### Tenant's Evidence

7. The Tenant testified that if the purchaser was going to move into the unit, they probably would have already moved into the lower vacant unit. The Tenant testified that they don't know what the purchaser will do, but they might renovate the units and re rent them for a higher price. She testified that she believes this to be the case because it is like that everywhere else.

### Analysis

8. Section 49 (1) of the Act states:

Notice, purchaser personally requires unit

49 (1) A landlord of a residential complex that contains no more than three residential units who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation by,

(a) the purchaser;

9. Based on the evidence before me, I am satisfied that the Landlord has entered into an agreement of purchase and sale, and the purchaser in good faith requires the unit for residential occupation.
10. The Tenant's belief that the purchaser will renovate and re rent the units for a higher price is merely speculation in the absence of any proof. The Tenant also suggested that if the purchaser was planning on moving into the unit, he would have already moved into the vacant unit in the duplex. I do not agree with this point. The purchaser testified that he'll need to do some renovations before occupying the unit to bring it up to his families' standards. Moreover, he does not own the complex, and has no right to occupy any of the units.
11. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2022. The Landlord placed the compensation cheque in the mailbox in

the common area, and the Tenant's submit that they did not receive it. I accept that compensation was given, however, it is now stale dated, and the Landlord will be ordered to reissue a compensation cheque to the Tenants.

Mandatory refusal of eviction

12. The Tenants argued that the application out to be denied under section 83 (3) (a) of the Act, which states:
- (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that ...
- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
13. The Tenants submit that the Landlord was in serious breach of their responsibilities in relation to a mouse infestation and a cockroach infestation.
14. With respect to the cockroach infestation, the Tenants did not convince me that this issue was ongoing to the date of the hearing. They testified that they have not seen a cockroach since December 2022. The request to mandatorily refuse eviction on this ground is dismissed.
15. With respect to the mouse issue, even if the issue is ongoing as of the date of the hearing, I am not satisfied that it is a "serious breach" within the meaning of s. 83 (3) (a) and decline to deny eviction on this basis.

Relief from eviction

16. The Tenants live in the unit with their three children. They rely on T. Pace's employment income and child tax credit to live on. They testified that rents for comparable units are substantially higher than what they pay. They have been looking at places but have yet to find anywhere. They testified that they do not have any family that can help out or take them in.
17. The Landlord is requesting eviction in a reasonable amount of time.
18. The Landlord has entered into an agreement of purchase and sale where the closing date has been amended multiple times. The Tenant's have been on notice of the Landlord's intention for quite some time already. I am sympathetic to the difficulties that the Tenants face with finding an affordable unit, and I find that a short delay to May 31, 2023, given the time it has taken to issue this order, reasonable in the circumstances.
19. 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 May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

**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 May 31, 2023.
2. If the unit is not vacated on or before May 31, 2023, then starting June 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 June 1, 2023.
4. On or before May 15, 2023, the Landlord shall pay to the Tenants \$750.00, representing compensation pursuant to the Act.
5. If the Landlord fails to pay the Tenants by May 15, 2023, then starting on May 16, 2023, the Landlord will start to owe interest calculated at 6% annually on the balance outstanding.

**May 4, 2023**  
**Date Issued**

\_\_\_\_\_  
Emily Robb  
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 December 1, 2023 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.