



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

**Citation:** Brox v Tilley, 2023 ONLTB 34858

**Date:** 2023-05-04

**File Number:** LTB-L-053458-22

**In the matter of:** Basement Apartment, 7 Elgin Street  
New Lowell ON L0M1N0

**Between:** Crystal Brox Landlord

**And**

John Tilley Tenant

Crystal Brox (the 'Landlord') applied for an order to terminate the tenancy and evict John Tilley (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, their legal representative, D. Berezowska and the Tenant 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 that application is granted and an eviction order shall issue.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 30, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of October 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by themselves.
4. The Landlord filed a declaration by the person intending to move in to the rental unit confirming their intentions of residing in the rental unit for a period of one year.

Compensation

5. For the following reasons, I find that the Landlords have compensated the Tenants an amount equal to one month's rent, in accordance with section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act').

6. Section 48.1 of the Act states that, “a landlord shall compensate a tenant in the amount equal to one month’s rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48”.
7. Section 55.1 of the Act requires that compensation under section 48.1 be paid to the tenant no later than on the termination date specified in the notice of termination.
8. The Landlord attempted to compensate the Tenant pursuant to section 48 of the Act on two separate occasions. First on June 3, 2022 and the second on Aug 30, 2022. Both times the e-transfers stale dated and were returned back to the Landlord.
9. The Tenant stated that he did not want to cash the compensation because he was contesting the Landlord’s good faith intention to occupy the rental unit and by accepting the compensation he would be deemed to have agreed with the notice of termination.
10. The Landlord attempted to pay the Tenants the compensation pursuant to section 48.1 of the Act. the Tenant refused to accept the transfer as they wanted to have this matter resolved by a hearing. I find that the Landlord has met their requirement to pay compensation. I say this because it would be an absurd result that the Tenant could unilaterally frustrate the Landlords application by refusing to accept the compensation.
11. However, given the language of section 83(4) of the Act, the Board shall not issue an eviction order if the landlord has not complied with paying the compensation. I stood the matter down at the hearing so that the Landlords could attempt, once again, to pay the Tenants the compensation. I received confirmation by the Tenants that they had received the compensation from the Landlords.

*Does the Landlord Genuinely Intend to Move into the Rental Unit?*

12. The first question to be answered on an application like this is whether or not the Board believes the Landlords genuinely intend to move into the rental unit.
13. The residential complex is a detached house with two identified units (upper and basement). The Landlord lives on the main floor and the Tenant rents the basement. The Landlord testified that her and her partner recently had a baby in June of 2022. Her partner moved into her space in January of 2023. That they would like to amalgamate their family and use the residential complex as one single family dwelling.
14. The Tenant did not dispute particularly that the Landlord was not moving in, rather that the notice of termination was served in retaliation to them attempting to enforce their rights. The Tenant submitted that around March 17, 2022, he had a conversation with the Landlord regarding the possibility of fostering a dog for a short amount of time.
15. During the hearing the Tenant relied on a series of text messages that show a conversation between the parties where he proposes the idea of fostering the dog and the Landlord does not agree. The Tenant asserts in the text message that according to the law in Ontario, you cannot deny a tenant the right to have a pet. The Landlord still opposes the

Tenant getting the dog. The Tenant asserts that the Landlord served the notice in retaliation to him getting this dog, Chester.

16. Subsection 83(3)(c) of the Act states:

Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that, ...

(c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

17. The courts have provided much guidance to the Board in interpreting the “good faith” requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.

18. In *Feeny v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

“...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal”.

19. In *Salter v. Beljinac*, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No 2792, the Divisional Court revisited the issue under [subsection 51\(1\)](#) of the [Tenant Protection Act, 1997, S.O. 1997, c. 24](#). The court referred to *Feeney, supra*, and held that:

“...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA.”

20. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act, 2006*, found as follows:

“We accept, as reflected in *Salter, supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

21. The question before the Board is not with respect to motive; rather it is with respect to intent. The difference between those two things is not readily understandable but essentially what the law says is that a landlord can have any number of motives for serving a notice of termination and a landlord is entitled to do that. Rather the issue on an application like this is whether or not the Landlord genuinely intends to move in.
22. Although the timing of events is considerably in close proximity to one another, I do not find that the application was brought in retaliation to the Tenant asserting that the Landlord

cannot preclude him from obtaining a pet. I accept the Landlord's evidence that her family is expanding, she has a newborn baby, her common law partner moved in to be one family unit. Therefore, I find it more likely than not that the Landlord genuinely intends to move into the rental unit for the purpose of residential occupation.

23. The Landlord collected a rent deposit of \$1,537.00 from the Tenant and this deposit is still being held by the Landlord.
24. 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.
25. 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.
26. The Tenant has resided in the rental unit since October 2020. He submitted that his minor children visit him part time. He currently is working full time but trying to find a place has been difficult given the current climate of the rental market.
27. I accept the evidence of the Tenant that trying to find a new rental unit may be troublesome. In consideration of both parties' circumstances, I find the above termination date to be fair. The termination date provides the Tenant with some additional time to find alternative accommodations and although there is some delay in the Landlord regaining possession, it is not so extensive that shall severely prejudice them. I say this because the Landlord is not at risk of losing their housing- unlike that of the Tenant.

**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. The Landlord shall apply the last month's rent deposit to the last month of the tenancy and shall credit the Tenant any interest owed to them on the deposit.
5. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

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

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**Curtis Begg**  
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 November 30, 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.