



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

**Citation:** Lapish v King and Nadjiwon, 2023 ONLTB 27579

**Date:** 2023-04-26

**File Number:** LTB-L-014155-22

**In the matter of:** 556 BAR RIVER RD  
ECHO BAY ON P0S1C0

**Between:** Edward Lapish Landlord

**And**

Dawna King Tenants Peter Nadjiwon

Edward Lapish (the 'Landlord') applied for an order to terminate the tenancy and evict Dawna King and Peter Nadjiwon (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 October 3, 2022.

The Landlord, the Landlord's legal representative Nathan Chevalier and the Tenants attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. On February 28, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation.
4. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
5. The Landlord testified that he is separating from his spouse and requires the rental unit for his own residence. The Landlord's current residence is located across the road from the rental unit. The Landlord testified that he would live separately from his spouse, but they will continue to co-parent their children.
6. The Tenants do not believe the Landlord will occupy the rental unit. The Tenants testified that they believe the Landlord wants to evict them because they complained about maintenance and repair issues at the rental unit. The Tenants also testified that the Landlord is in serious breach of his obligations under the *Residential Tenancies Act, 2006* (the 'Act') and the tenancy agreement.
7. The Tenants introduced a photograph of the handrail the Landlord installed in the rental unit. The Tenants agreed that the Landlord responded to their complaint about the handrail on the same day. Although the photograph shows some rough edges, I find that this does not represent a serious breach of the Landlord's duty to maintain and repair the rental unit.
8. I also find that the Tenants did not give evidence that shows the Landlord gave the N12 because of the Tenants' complaint about the handrail.
9. The Tenants testified that the rental unit's primary source of heat is a wood stove located outside the rental unit. The Tenants testified that the Landlord blocked access to the stove on April 1, 2022.
10. The Landlord agreed that he installed a barrier around the outdoor wood burning stove. The Landlord testified that he provides the Tenants with scrap wood from the rental property's grounds as fuel for the stove. Some of the scrap wood may contain nails. The Landlord explained that the scrap wood is stored in a shed to prevent livestock from injuring itself.
11. The Landlord stated that he observed the Tenants allow scrap wood to accumulate around the wood stove. This presented a hazard to livestock. I note that scrap wood left by a wood stove may also pose a fire hazard. When the Tenants continued to permit scrap wood to accumulate around the stove, the Landlord installed the barrier. The Landlord testified that he monitors the stove daily to ensure that it has sufficient fuel to provide adequate heat to the rental unit.
12. The Tenants did not dispute that they permitted scrap wood to accumulate near the stove. Although the Tenants testified that there was occasionally inadequate heat, the Tenants did not provide sufficiently detailed testimony – such as dates and times – or submit photographs of temperature readings to prove their allegation.

13. I find the Landlord's decision to build a barrier around the wood stove was reasonable in the circumstances. Since the Tenants did not prove that the Landlord interfered with the reasonable supply of heat, I find that the tenants did not prove that the Landlord's application must be dismissed under section 83 of the Act.
14. There is no evidence the Landlord tampered with the Tenants' mail.
15. The Tenants testified that they have not observed the Landlord's children get picked up to attend school. This is not, however, evidence that the Landlord gave the N12 in bad faith.
16. Based on all the evidence, I find that the Landlord in good faith requires the rental unit for his own residential use.
17. The Landlord has compensated the Tenants an amount equal to one month's rent by April 30, 2022.
18. The Tenants did not dispute they received compensation from the Landlord, which the Landlord paid after giving the Tenants an earlier, defective N12. The Tenants did not return the money when their tenancy was not terminated, per that N12. The Tenants explained that they kept the compensation payment because they were experiencing financial difficulty. The Landlord testified that he instructed the Tenants to keep the compensation payment after giving the Tenants the N12 in this application.
19. The Tenants were required to pay the Landlord \$6,154.52 in daily compensation for use and occupation of the rental unit for the period from May 1, 2022 to October 3, 2022.
20. Based on the Monthly rent, the daily compensation is \$39.45. This amount is calculated as follows: \$1,200.00 x 12, divided by 365 days.
21. There is no last month's rent deposit.
22. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
23. The Tenants have resided at the rental unit since February 2021. Although the Landlord has the right to occupy the rental unit, it is appropriate to give the Tenants some additional time to find new accommodation for their household.

**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 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 Tenants shall pay to the Landlord \$6,154.52, which represents compensation for the use of the unit from May 1, 2022 to October 3, 2022.
5. The Tenants shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting October 4, 2022 until the date the Tenant moves out of the unit.
6. If the Tenants do not pay the Landlord the full amount owing on or before May 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from June 1, 2023 at 5.00% annually on the balance outstanding.

**April 26, 2023**

**Date Issued**

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Percy Laryea

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.