



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

**Citation:** Iskarous v Rebetez, 2023 ONLTB 31133

**Date:** 2023-04-14

**File Number:** LTB-L-046159-22

**In the matter of:** 3020 Creekshore Common  
Oakville ON L6M0Y6

**Between:** Eriny Salama Landlord  
Monir Iskarous

**And**

Yves Rebetez Tenant

Eriny Salama and Monir Iskarous (the 'Landlord') applied for an order to terminate the tenancy and evict Yves Rebetez (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.

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 April 3, 2023.

The Landlord, the Landlord's Legal Representative Desislava Yordanova and the Tenant attended the hearing.

**Determinations:**

1. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation. The tenancy between the Landlord and the Tenant will be terminated.
2. On August 10, 2022, the Landlord gave the Tenant an N12 notice of termination for Landlord's own use. The termination date on the N12 notice is October 14, 2022.
3. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies*

*Act, 2006* (the '*Act*') by filing with the Board two declarations signed by both of the Landlords stating that in good faith they require the rental unit for their own personal use for a period of at least one year.

4. 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 provided no later than on the termination date specified in the notice of termination of the tenancy given by the landlord.
5. The Landlord testified that he provided a cheque (#202) to the Tenant dated September 29, 2022 in the amount of \$2,985.00, one month's rent, which the Tenant did not cash. The Landlord sent the cheque to the Tenant via registered mail and tendered a copy of a tracking document from Canada Post which indicates the document was delivered to the Tenant on October 5, 2022. As of the date of the hearing, the Tenant has not cashed the cheque although it would be now stale-dated.
6. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenant with a cheque to cover one month's rent for the compensation required for the N12 notice by providing a cheque to the Tenant dated September 29, 2022 which was delivered via registered mail on October 5, 2022. I further find that by doing so, the Landlord has satisfied the requirement under s.48.1 that they "compensate" the Tenant, notwithstanding that the Tenant did not cash the cheque and it would now be stale-dated.
7. The Landlord, Monir Iskarous ('MI') testified that he and his spouse want to downsize and move into the rental property. MI submits that his children have all left their current home, are studying abroad and the current home is causing them significant financial strain as it is too expensive to maintain. The Landlord states he is now "house poor". The Landlord submits that the rental unit is smaller and will be much more manageable as it is under 2000 square feet while their current home is 4250 square feet plus the basement. The Landlords state they plan to sell their current home once they are moved into the rental unit.
8. The Landlord acknowledged that he does have another rental property but it is in Mississauga and it is 2750 square feet plus a basement and the property taxes are more than double the cost as the rental unit is. As well, they wish to stay in Oakville where everything is known to them including that the Landlord's doctor is in Oakville. The Landlord testified that he also works from home because of his disability.
9. The Landlord testified that he has attempted to assist the Tenant in locating alternative accommodations, including a unit that may have been available in the same complex and has also offered to assist with moving out of the rental unit.

10. The Tenant states that the Landlord's application is brought in bad faith as he had informed the Landlord in late 2021 that he was intending to have roommates reside in the rental unit to which the Landlord refused to permit and then two days before Christmas insisted on a home inspection. As a result, the relationship between them has deteriorated to the point where the Landlord is now trying to evict him.
11. The Tenant acknowledged that he now has two young adults, ages 20 and 22 years old, living with him as roommates since February/March, 2022 and has experienced financial hardships due to a marital breakdown. As well, the Tenant is self-employed and his business does not generate much revenue so he is supporting himself by drawing on the proceeds from the sale of the former family household.
12. The Tenant testified that the unit the Landlords referred him to costs 20% more in rent and does not believe the Landlords are downsizing, their main goal is to expel him from the rental unit. The Tenant does not have any proof that the Landlords do not wish to reside in the rental unit but states its evident because the Landlord has another rental property and this application is bad faith.
13. The Landlord's Legal Representative submits that the application has been brought in good faith and that the Landlord's genuine intention is to live in the rental unit as their current home is just too large and a significant financial strain on them. The Landlord requests that the termination of the tenancy be as soon as possible and asks for a standard order.
14. The Tenant's position is that he is also under financial strain but believes the Landlords are not acting in good faith and seeks at least 90 days notice if the Landlord's application is granted.
15. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement pursuant to section 48(1) of the *Act* which states:

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) a landlord;
- (b) the landlord's spouse;
- (c) a child or parent of the landlord or the landlord's spouse; or
- (d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile Home Park or land lease community in which the rental unit is located.

16. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that they genuinely intend to move into the rental unit.
17. The courts have provided much guidance to the Board in interpreting the “good faith” and “genuine intent” 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) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

20. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, 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. In this case, the Landlord MI testified that he and his spouse want to downsize and live in the rental unit for at least a one year period as it is more manageable for them.
22. Based on the evidence and submissions before me, I am satisfied that there is a genuine intention for the Landlord to move into the rental unit after the Tenant vacates the unit. While the Tenant offered reasonable suspicions, which are genuinely held by him, they remain mere suspicions. I am not satisfied that they are sufficient to cast doubt on the Landlords’ intentions. The Landlords provided declarations as required by the *Act* and the Landlord testified at the hearing regarding his intentions. I have no reason to doubt the truthfulness of the Landlord’s testimony or their good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for their own residential occupation and that they genuinely intend to reside in the unit for at least one year.
23. Therefore, I find that the Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation. As the compensation cheque that was provided to the Tenant pursuant to the *Act* would now be stale-dated, under section 190(2) of the *Act*, I extend the deadline for paying compensation to May 31, 2023.
24. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for their own purpose of residential occupation for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to deny the Landlords’ application for eviction. For the following reasons, I find that it would be appropriate to evoke discretionary relief pursuant to section 83 of the *Act*.
25. The Tenant moved into the rental unit in 2018 and now resides with two other individuals in the rental unit as roommates. The Tenant stated that he is experiencing financial difficulty, thus the roommates providing assistance. The Tenant stated that he has had to tighten his belt, as has everyone, due to rising costs and the proceeds from the sale of the former matrimonial home has almost been depleted.
26. I have considered both parties’ position, including the length of this tenancy, the Tenant’s financial situation and while I recognize that the Tenant may experience some difficulties in locating alternative housing, the Landlord has the right to evict a Tenant for Landlord’s own use so long as the Landlord genuinely requires the unit for the purpose of residential occupation which I have found. While the Landlord’s current living situation is perhaps not ideal, they do have somewhere to live and thus I find it would not be unfair to delay eviction. I find that a short delay of eviction is appropriate, given the circumstances.
27. After considering all of the disclosed circumstances of both of the parties, in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the ‘Act’), I find that it would

not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the *Act* as this additional time will assist the Tenant in locating new accommodations.

28. This order contains all of the reasons within it and no further reasons will be issued.

**It is ordered that:**

1. The Landlord shall pay to the Tenant compensation owed under section 48.1 of the *Act*, namely one month's rent, on or before May 31, 2023.
2. If the Landlord satisfies the requirement in paragraph 1 of this order, 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. If the Landlord does not satisfy the requirement in paragraph 1 of this order, the tenancy is not terminated.
3. 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.
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 June 1, 2023.
5. The Tenant shall also pay the Landlord compensation of \$100.60 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit.

**April 14, 2023**

**Date Issued**

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Heather Chapple

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.