



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

**Citation:** Hayat issa jibr v Alchami, 2023 ONLTB 31003

**Date:** 2023-04-14

**File Number:** LTB-L-047159-22

**In the matter of:** 3294 CANDLEWOOD CRES  
WINDSOR ON N8W5M8

**Between:** Hayat Issa Jibr Issa Landlord

**And**

Abdulkader Alchami Tenant  
Ghada Hamcho  
Talal Alchami

Hayat Issa Jibr Issa (the 'Landlord') applied for an order to terminate the tenancy and evict Abdulkader Alchami, Ghada Hamcho, and Talal Alchami (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's Agent Christine Issa, the Landlord's daughter Silva Issa, the Landlord's Legal Representatives Hugh Mai and Brenell Dean, the Tenant Talal Alchami and the Tenant Ghada Hamcho attended the hearing.

**Determinations:**

*Preliminary Issues*

1. Prior to the commencement of the hearing, it was determined that the Tenant Mustafa Al Shami, the Tenant Joud Alshamy and the Tenant Hajer Alchami were minors at the time of signing the lease and a request was made to remove these minors from the proceeding. The Landlord did not oppose this request. Accordingly, the proceedings have been amended by removing "Mustafa Al Shami", "Joud Alshamy" and "Hajer Alchami".
2. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by her daughter. The tenancy between the Landlord and the Tenant will be terminated.

3. On August 12, 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 31, 2022.
4. The Landlord met the requirements under section 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') by filing with the Board an affidavit sworn by the Landlord, Hayat Issa Jibr Issa, stating that in good faith her daughter requires the rental unit for her own personal use for a period of at least one year. The Landlord's daughter Selfa Issa also provided a sworn affidavit stating that she, in good faith, intends to move into the rental unit for residential purposes as the rental unit is closer to her school and her workplace.
5. 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.
6. The Landlord's Legal Representative tendered into evidence a rent ledger which showed compensation was applied for the month of October, 2022 in the amount of \$1,750.00 and that there was a letter dated August 12, 2022 from the Landlord's Legal Representative to the Tenants stating rent would be waived as it would represent compensation.
7. The Landlord's daughter Christine Issa ('CI') testified that the Tenant did not pay rent for October, 2022 as compensation for the N12 notice was applied for that month. CI stated that she never had discussions with the Tenants concerning the October rent.
8. The Tenant Talal Alchami ('TA') stated that he did not read the August 12, 2022 letter in its entirety and did not know compensation would be applied in exchange for the payment of rent. In cross examination, TA acknowledged that there was never a missed rent payment, rent was paid for the months of August, September and November, 2022 but he forgot to pay rent for October, 2022. TA stated that he received the N12 notice and was aware of its termination date of October 31, 2022.
9. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenant with one month's rent for the compensation required for the N12 notice by waiving rent for the month of October, 2022 and the Tenant was aware of this as while rent was paid for the previous months and the month of November, rent was not collected for October, 2022.
10. The Landlord's daughter Selfa Issa ('SI') testified that she wants to move into the rental unit as it is close to her school and her place of employment. She is just finishing a fashion design program and intends to return to school for an interior design program which is 3 years in length. SI testified that she has packed her belongings and she is ready to move into the rental unit. SI also stated that if she is not accepted into the interior design program, she will still continue to reside in the rental unit.
11. The Tenant, Tala Alchami ('TA') states that the Landlord's daughter currently lives 15 minutes away and that her reasons for wanting to move into the rental unit are not valid.
12. According to the Tenant TA, the Landlord approached him in June, 2022 for an increase in rent of \$250.00. At that time, he refused to agree to the rent increase. TA believes that

they were served with the N12 notice because of their refusal to agree to the rent increase proposed by the Landlord.

13. 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.

14. The onus is on the Landlord to establish that she, in good faith, requires the rental unit for the purpose of residential occupation and that the Landlord’s daughter genuinely intends to move into the rental unit.
15. 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.
16. 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”.

17. 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.

18. 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.”

19. In this case, the Landlord's daughter testified that she wants to live in the rental unit as it is closer to school and work and she will live in the unit for at least a one year period.
20. Based on the evidence and submissions before me, I am satisfied that there is a genuine intention for the Landlord's daughter 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 Landlord's daughter's intentions. The Landlord and her daughter provided affidavits as required by the *Act* and the Landlord's daughter testified at the hearing regarding her intentions. I have no reason to doubt the truthfulness of the Landlord's daughter's testimony or her good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for her daughter's own residential occupation and that she genuinely intends to reside in the unit for at least one year.
21. Therefore, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation by her daughter.
22. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for the purpose of residential occupation by her daughter for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to deny the Landlord's 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*.
23. The Tenants are a family of 6 with two children aged 9 and 14 years. TA stated that his father has been in the ICU department of the hospital for 1.5 years and they have lived in the rental unit since May 1, 2021. They have not found any alternative rental unit and stated that moving would not be easy but they are working with Windsor Housing.

24. I have considered both parties' position, including the length of this tenancy, the Tenant's children's educational needs, and their family dynamic and while I recognize that the Tenants 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 daughter's current living situation is perhaps not ideal, she does have somewhere to live and thus I find it would not be unfair to delay eviction. I find that a delay of eviction is appropriate, given the circumstances.
25. 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.
26. This order contains all of the reasons within it and no further reasons will be issued.

**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 Tenant shall also pay the Landlord compensation of \$115.07 per day for the use of the unit starting April 4, 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.