



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

Citation: Al-Hariri v Grandison, 2023 ONLTB 31041

Date: 2023-04-13

File Number: LTB-L-023789-22

In the matter of: 20 LONE ROCK CIR
BRAMPTON ON L6P3X4

Between:	Fuwad Al-Hariri	Landlord
	and	
	Roger Grandison Samantha Grandison	Tenants

2023 ONLTB 31041 (CanLI)

Fuwad Al-Hariri (the 'Landlord') applied for an order to terminate the tenancy and evict Roger Grandison and Samantha Grandison (the 'Tenants' or 'R.G.' and 'S.G.', respectively) 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 January 23, 2023.

The Landlord attended the hearing and was self-represented. The Landlord's spouse, Sawsan Al-Jaabi ('S.A.'), was called as a witness. The Tenants attended the hearing and were self-represented.

Determinations:

1. This rental unit in this application is a detached house.
2. The Landlord requests an order terminating the tenancy so that the Landlord can occupy the unit for personal use.
3. For reasons that follow, the application is granted. The Tenants are to vacate the unit on or before July 31, 2023.

THE L2 APPLICATION

4. The following facts are not in dispute:
 - a. The residential complex is a detached house. The Tenants occupy the entire house.

- b. An N12 notice of termination (the 'N12 Notice') was delivered to the Tenants by the Landlord's spouse on April 26, 2022 informing the Tenants that the Landlord intends to move into the rental unit and occupy it for at least one year.
- c. The date of termination identified on the N12 Notice was June 30, 2022.
- d. The monthly rent is \$1, 939.29.
- e. The Landlord paid the Tenants one-month compensation of \$1,939.29 by cheque on April 26, 2022.
- f. The Tenants have yet to vacate the rental unit.

Good faith

5. Subsection 48(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act') provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord in good faith requires possession of the unit for residential occupation for a period of at least one year. The evidence supports a finding that the Landlord intends, in good faith, to occupy the unit for residential purposes for at least one year.
6. The test of good faith is outlined in a series of judicial decisions. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement means that the Landlord sincerely intends to occupy the rental unit. Although the Landlord may have other motives for selecting a particular rental unit, these would not affect the good faith of the Landlord's notice.
7. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court added that while the motives of the Landlord are "largely irrelevant", as determined in *Salter*, the Board may consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the residential unit.

Landlord's evidence

8. S.A. testified that the Landlord intends to move into the rental unit due to personal financial challenges being experienced by the family.
9. Elaborating further, since 2019, the Landlord and his family have experienced personal financial challenges such that moving into the rental unit not only fits their needs, but enables them to sell their current residence to alleviate their financial challenges. The Landlord intends to move into the unit as soon as possible so that they can place their current residence up for sale.
10. The Landlord submitted into evidence a copy of a 'Declaration' dated April 27, 2022 wherein the Landlord affirms that he intends to move into the unit "for at least one year", and a copy of the N12 Notice dated April 26, 2022.

Tenant's evidence

11. S.G. testified on behalf of both Tenants. In their view, the Landlord had given them an N12 Notice in bad faith for multiple reasons which includes: (i) an alleged long-standing history of unresolved maintenance issues which the Landlord is trying to circumvent with an eviction; (ii) their interest to re-rent the unit for a higher monthly rent; and, (iii) a breakdown in their personal relationship. The Tenants also contest the financial challenges the Landlord testified to during the hearing.
12. First, S.G. testified that they had complained to the Landlord about multiple maintenance issues which, to date, have gone unresolved. In response, the Landlord allegedly issued N12 Notices to evict the Tenants to avoid addressing their maintenance obligations. Cited as examples were the following outstanding maintenance issues: (i) lawn maintenance and snow removal; (ii) repairs to an internal door; (iii) missing and/or broken bathroom and Master Bath sink stoppers; (iv) the absence of smoke and carbon monoxide detector; and, (v) a dysfunctional refrigerator, door bell, and garage. S.A. contests S.G.'s evidence in this regard stating that the Landlord does address maintenance issues, however, did not provide additional details regarding the specific efforts made in response to the Tenants concerns.
13. Secondly, the Landlord had, on multiple occasions, demanded rent increases that were above the Guideline without first obtaining Board approval and, when they resisted, were immediately issued N12 Notices. The Tenants received N12 Notices in 2017, 2019, 2021 and in 2022, all of which, in the view of the Tenants, demonstrate a history of trying to evict them based on the low rent they pay. S.A. does not contest that the Landlord issued multiple N12 Notices since 2017, explaining that due to their personal circumstances (i.e. financial challenges and family responsibilities) they sought to move into the rental unit. S.A. confirmed that the Landlord had not given any other N12 Notices to this rental unit, or any other rental unit, in the past two years as indicated on their application.
14. Thirdly, the Tenants allege that the N12 Notice was issued in bad faith as their relationship with the Landlord had deteriorated such that evicting them would resolve their poor relations.
15. Finally, the Tenants contest the financial challenges S.A. testified to, citing equity within the rental unit and their personal residence from which, in their view, calls into question this part of the Landlord's evidence.

Analysis

16. I find that, based on the evidence presented, and in accordance with the courts' decisions in *Feeney* and in *Salter*, the Landlord, in good faith requires possession of the rental unit for his own use as indicated in the N12 Notice. I am satisfied that the Landlord has a genuine intention to occupy the premises for at least one year and, as such, issued the N12 Notice in good faith.
17. Although I acknowledge the Tenants evidence of the Landlord's history of issuing notices of termination, and the Courts decision in *Fava* to consider the conduct and motives of the

Landlord, I am satisfied that given the length of time the tenancy has been in place it is not unusual for disputes to arise such that giving notices of termination by either party may be necessary. As such, I do not draw a negative inference that the Landlord does not have a genuine intention to move into the unit based on the past history of giving notices of termination.

18. I am also satisfied that, pursuant to *Feeney and Salter* and despite the Tenants' concerns of the reasons behind the Landlord's choice to move into the rental unit (i.e., the Landlord's financial circumstances) that the Landlord has a genuine intention to occupy the unit.

Compensation

19. As outlined above the evidence supports a finding that the Landlord paid one-month compensation to the Tenants in compliance with section 48.1 of the Act.

Relief from Eviction

20. Subsection 83(3)(a) of the Act provides that the Board shall refuse to grant the application where satisfied that the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement.
21. The Act does not define "serious breach".
22. The leading case which outlines the test for a "serious breach" is *Puterbough v. Canada Public Works and Government Services* [2005] O.J. No 5727. In that case, the court described a "serious breach" in the context of a landlord's maintenance obligation "means more than the rental premises being in a poor condition and in need of significant work... In short, a serious breach of the landlord's responsibilities is not established simply by the rental premise being in need of extensive repairs".
23. In *Puterbough*, the Divisional Court outlined this test for "serious breach" of maintenance in a case where there was evidence that the properties in question would have had to be demolished.
24. The purpose of subsection 83(3)(a) of the Act is to ensure landlords do not rely on an eviction of tenants as a means of circumventing their statutory obligations under the Act. That said, when addressing a tenant's arguments pertaining to the landlord's alleged breaches in that case, the Court went on to state: "To accept the Tenant's argument that all breaches of the Landlord's responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word 'serious' in that subsection."
25. Based on the evidence presented at the hearing pertaining to the alleged outstanding maintenance issues in the unit, I am not satisfied that the Tenants have established a "serious breach" within the meaning of subsection 83(3)(a) of the Act in relation to these issues. This finding is limited to the purpose of section 83 of the Act however, and is not meant to preclude the Tenants from pursuing a maintenance application against the Landlord should they so choose.
26. Subsection 83(2) of the Act requires the Board to review all of the circumstances and consider whether or not it should exercise its powers under subsection 83(1). Having

considered the circumstances, I find that it would not be unfair to postpone the eviction pursuant to subsection 83(1)(b) until July 31, 2023.

27. S.G. testified to the impact an eviction would have on the Tenants, explaining that they are a single income family who live with disabilities, and have lived in the unit for approximately 10 years. S.G. also testified to the financial challenges looking for a new home would bring.
28. In response to questioning posed by the Board, the Landlord explained that any further delay in granting the application would be prejudicial to the Landlord and his family due to the financial challenges they currently face. Among other things, their daughter attends university in the United States whose tuition they fund, and their son is getting married and requires a place to reside in with his spouse. As such, they are required to prepare the basement of the rental unit for his son and spouse to move into, which is an added expense to their other personal financial challenges. Prolonging the tenancy would prolong the financial challenges the Landlord has to live with which he intends to alleviate by sell their personal residence. In the event the application is denied, the Landlord will sell the rental unit.
29. Considering all of the evidence and, notwithstanding the Landlord in good faith requires possession of the rental unit for his personal use, I find that, pursuant to subsection 83(1)(b) that it would not be unfair to the Landlord to delay the eviction until July 31, 2023 due to the significant impact an early eviction would have on the Tenants and their children.
30. Given the length of the tenancy, I draw an inference that the Tenants have a significant connection to the community and am satisfied that they may experience challenges securing housing that fits their needs such that more time is required. By contrast, the Landlord and his family continue to have stable housing as their personal residence is not being sold until they move into the rental unit. While I acknowledge that the unit in which the Landlord lives no longer meets his needs, after considering the totality of the circumstances, and noting that it has been over two months since the hearing, I conclude that delaying eviction until July 31, 2023, is fair and appropriate.

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 July 31, 2023.
2. If the unit is not vacated on or before July 31, 2023, then starting August 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 August 1, 2023.

- The Tenants shall also pay the Landlord compensation of \$63.76 per day for the use of the unit starting January 24, 2023 until the date the Tenants moves out of the unit less any amount already paid.

April 13, 2023

Date Issued

Emile Ramlochan

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 February 1, 2024 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.