



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

**Citation:** Lee v Higgins, 2023 ONLTB 30929

**Date:** 2023-04-12

**File Number:** LTB-L-046076-22

**In the matter of:** 2, 469 ROXTON RD  
TORONTO ON M6G3R5

**Between:** Eric Lee Landlord  
Michelle Lau

**And**

Brenda Thompson Tenant  
Kalyn Fantasia  
Madeline Higgins

2023 ONLTB 30929 (CanLII)

Eric Lee and Michelle Lau (the 'Landlord') applied for an order to terminate the tenancy and evict Brenda Thompson, Kalyn Fantasia and Madeline Higgins (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 Brett Lockwood, the Tenant Brenda Thompson and the Tenant Kalyn Fantasia attended the hearing. Prior to the commencement of the hearing, the Tenants spoke with Tenant Duty Counsel.

**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. The rental unit is a row home. The Tenant resides on the second and third floor of the home, there is no-one occupying the basement level. The Tenant Kalyn Fantasia ('KF') testified that she moved into the rental unit in September, 2014 while the Tenant Brenda Thompson ('BT') moved into the rental unit in September, 2015.

3. The Tenants stated that the Tenant Madeline Higgins was a Tenant but moved out as of March 1, 2023.
4. On August 9, 2022 the Landlord served the Tenant with a N12 Notice of Termination ('N12 notice'). The N12 notice states that the Landlord requires the rental unit for their own personal residential occupation for at least one year. The termination date on the N12 notice is October 31, 2022.
5. Section 48.1 of the *Residential Tenancies Act*, 2006 (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 testified that the Tenant was previously served with an N12 notice on May 24, 2022 by the former Landlord and that compensation was paid by the Landlord to the Tenants on July 30, 2022 in the total amount of \$2,230.50. The Landlord tendered into evidence a screenshot showing the e-transfers sent to the three Tenants and confirmed the Tenants deposited the funds.
7. The Landlord's Legal Representative also tendered into evidence correspondence dated September 20, 2022 from the Landlord's Legal Representative to the Tenant which states that as the previous N12 notice served May 24, 2022 was aborted and replaced with the new N12 served August 9, 2022, and as the Tenant had not re-paid the compensation to the Landlord, the debt "shall be forgiven in lieu of paying additional compensation. Please note we will be relying on the compensation paid July 30, 2022 as the compensation for this N11/L2. Should you have any questions, please let me know". The Landlord's Legal Representative stated that he was not contacted by the Tenant.
8. The *Act* does not contemplate what happens when a landlord provides notice pursuant to section 48, provides the tenant with monetary compensation and then does not proceed with an application under section 69 of the *Act*. The *Act* does, however, contemplate what happens when a landlord files an application seeking vacant possession and that application is not successful. Subsection 73.1(1) of the *Act* states:

73.1(1) If the landlord compensated the tenant under section 48.1, 49.1, 52, 54 or 55 as the case may be, in connection with a notice of termination under section 48, 49 or 50 and the Board refuses to grant an application under section 69 for an order terminating and evicting the tenant based on the notice, the Board may order that the tenant pay back the compensation to the Landlord.
9. Taking into account the above, it is my view that where a landlord provides monetary compensation in connection with an aborted attempt to secure vacant possession of a rental unit pursuant to section 48 of the *Act*, the tenant is obliged to return the compensation and it constitutes a liquid debt owing by the tenant to the landlord that can be recovered through legal process.

10. In this case, what the Landlord purports to have done is rely on waiver of liquidated debt owing to them by the Tenant as a result of the aborted N12 notice as the compensation required by section 48 of the *Act* in connection with this second N12 notice served August 9, 2022.
11. Section 48.1 of the *Act* requires a landlord to compensate the tenant but it does not require a landlord to pay an amount to a tenant. For example, a landlord can provide compensation by waiving or forgiving a liquidated debt owing by the tenant to the landlord as at the termination date in the N12 and equal to one month's rent. However, the landlord should advise the tenant prior to the termination date that the liquidated debt is being waived or forgiven as compensation.
12. In this case, the Landlord provided correspondence to the Tenant on September 20, 2022, before the termination date stated in the N12 notice clearly and unequivocally advising the Tenant that the obligation to return the previously provided compensation was being waived in lieu of paying additional compensation.
13. I am therefore 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.
14. The next 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;

15. 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 the Landlord genuinely intends to move into the rental unit.
16. 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.
17. 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".

18. 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.

19. 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.”

20. In this case, the Landlord, Eric Lee ('EL') testified that when he and his spouse purchased the home, they bought it as they had outgrown their condominium and they wanted a larger home to start their family. EL submits that the rental unit is in the neighbourhood they want, they both work downtown Toronto, and the rental unit is close to the subway.
21. The Landlord is currently renting a condominium which is approximately 650 square feet and their landlord is permitting them to stay until this application is disposed of however, the Landlord wants possession of the rental unit immediately as they are paying additional rent and have been waiting to start a family in their “perfect” home.
22. The Tenant KF testified that she did not receive the Legal Representative's correspondence of September 20, 2022 but that they did not return the compensation to the Landlord as they believed the Landlord intended to move into the rental unit.
23. While both Tenants at the hearing stated that other houses in the neighbourhood were “flips” and that another unit had been vacant since November, they did not know of any reason why the Landlord's application was not made in good faith and had no reason to disbelieve the Landlord did not want to actually reside in the rental unit. Both Tenants stated that they just wanted to go through the process.
24. The Landlord provided clear and consistent evidence that they intend to move into the rental unit for at least one year. On the basis of the evidence and submissions before me, I have no reason to doubt the truthfulness of the Landlord's testimony or their good faith intention. 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 intends to reside in the unit for at least one year.

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 12, 2023 pursuant to subsection 83(1)(b) of the *Act*.
26. Both of the Tenants at the hearing stated that they have been looking for housing. KF stated that she has accumulated a lot of furniture over the years, wants to stay in the downtown area as her commute to work is much shorter. KF stated that she does have family who resides in Etobicoke and requests six months to vacate. BT testified that she cannot find affordable housing and that her closest family member already has a roommate and her immediate family is approximately 3 hours away. The Landlord requested a termination date of April 30, 2023.
27. In considering the circumstances including both parties' positions, I am not satisfied that it would be unfair to the Landlord to give the Tenant some additional time to move however, I am not prepared to postpone eviction for six months as the Tenant requests. I find it would not be unfair to postpone eviction until May 12, 2023. I accept that the Tenant has made some attempts to locate alternative housing, and that this is a long-standing tenancy. By postponing eviction until May 12, 2023, it will provide the Tenant with additional time to locate alternative housing.
28. This order contains all of the reasons for this matter 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 12, 2023.
2. If the unit is not vacated on or before May 12, 2023, then starting May 13, 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 May 13, 2023.
4. The Tenant shall also pay the Landlord compensation of \$73.33 per day for the use of the unit starting May 13, 2023 until the date the Tenant moves out of the unit.

**April 12, 2023**  
**Date Issued**

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 November 13, 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.