



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

**Citation:** Freeman v Zuccolo, 2023 ONLTB 30849

**Date:** 2023-04-12

**File Number:** LTB-L-041906-22

**In the matter of:** Lower Level, 139 Lake Drive North  
Keswick ON L4P3C8

**Between:** Jason Freeman Landlord

**And**

Jennifer Zuccolo Tenant

2023 ONLTB 30849 (CanLII)

Jason Freeman (the 'Landlord') applied for an order to terminate the tenancy and evict Jennifer Zuccolo (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.

This application was heard by videoconference on April 3, 2023.

The Landlord 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. The residential complex is a fully detached, two story home. The Landlord resides in the upper level and the Tenant resides in the basement level. The Tenant moved into the rental unit on June 15, 2020 and pays rent in the amount of \$1,500.00 per month.
3. On June 23, 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 his own personal residential occupation for at least one year. The termination date on the N12 notice is September 14, 2022.
4. 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.

5. The Landlord testified that he sent an e-transfer to the Tenant in the amount of \$1,500.00 on August 1, 2022 which was accepted by the Tenant and tendered a screenshot of this transaction into evidence.
6. 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 sending an e-transfer to the Tenant on August 1, 2022.
7. 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;

8. The onus is on the Landlord to establish that he, in good faith, requires the rental unit for the purpose of residential occupation and that the Landlord genuinely intends to move into the rental unit.
9. 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.
10. 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".

11. 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.

12. 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.”

13. In this case, the Landlord testified that when he initially rented the unit to the Tenant, he was single but now he has a fiancé who also works from home and they both require more living space. The Landlord submits that his current space is approximately 700 square feet and by using the entire home, he can have family and friends over to enjoy the entire house and the outdoor space.
14. The Landlord acknowledged that he would also be performing some renovations to the home, including the front entrance and he plans to open up the stairwell, which is currently closed, so that he would have access to the basement. The Landlord acknowledged that the Tenant smokes in the unit which makes the entire house unbearable at times and that this is his only rental property and does not want to own a rental property again.
15. The Landlord’s witness, Kerri Richardson (‘KR’) testified that she is the fiancé of the Landlord and that they want to use the entire home for their personal use and privacy. KR stated that their current space is small and they want to share their home with friends and family.
16. The Tenant testified that she has been dealing with maintenance issues in the rental unit since October, 2022, that the service of the N12 notice is retaliation against her and that the Landlord is acting in bad faith.
17. The Tenant filed a timeline she had drafted starting from October 16, 2021 to February 17, 2022 which detail essentially an issue where water had infiltrated the basement and the remedial work that subsequently took place. Insufficient evidence was provided by the Tenant with regards to the maintenance issues however, the Tenant indicates that she filed a T2/T6 tenant application with the Board on August 16, 2022 and is waiting for her hearing with respect to these applications.
18. The Tenant testified that she believes the basement is actually 1500 square feet with one bedroom and that the Landlord’s level is the same size but has three bedrooms and questions why he would need more space. The Tenant tendered into evidence an aerial view of the home and stated that if the Landlord was to use the entire home, he would have to park his vehicle at the rear where he has his garage and then walk around the home to enter. As well, the Tenant states that the Landlord has renovated the upper level

and has installed a bathroom over the staircase that would take him downstairs so he currently cannot access the basement from his level.

19. The Tenant submits that she has a young son, is self-employed, a single mother and only smokes outside. The Tenant stated that she is stressed over the possibility of having to move and she has been looking for somewhere else to live but cannot find anything due to having a dog, no references and a poor credit rating. The Tenant stated she is working with Ontario Works and York Region Children's Aid Society.
20. The Landlord provided clear and consistent evidence that he intends to move into the rental unit for at least one year. As well, his fiancé provided consistent evidence as to the Landlord's intentions. On the basis of the evidence and submissions before me, I have no reason to doubt the truthfulness of the Landlord's testimony or his good faith intentions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for his own residential occupation and that he genuinely intends to reside in the unit for at least one year.
21. 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 31, 2023 pursuant to subsection 83(1)(b) of the *Act*.
22. The Tenant has a young son and has lived in the rental unit for approximately 3 years. The Tenant requested an additional 6 months to locate alternative housing. The Landlord indicated that the Tenant has already been given additional time to locate housing and that the situation is no longer healthy.
23. 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 31, 2023. I accept that the Tenant has made some attempts to locate alternative housing, has a young child, a dog and that she is working with social agencies to assist her. By postponing eviction until May 31, 2023, it will provide the Tenant with additional time to locate alternative housing.
24. 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 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.

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

15 Grosvenor Street, Ground Floor,  
Toronto ON M7A 2G6

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Heather Chapple  
Member, Landlord and Tenant Board

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.