



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

**Citation:** Nikolov v Murray, 2023 ONLTB 27456

**Date:** 2023-03-28

**File Number:** LTB-L-036341-22

**In the matter of:** Upper, 34 DENLAW RD LONDON  
ON N6G3L4

**Between:** Nikolay Nikolov Landlord

**And**

Brenda Panchyshak Tenants  
John Murray

Nikolay Nikolov (the 'Landlord') applied for an order to terminate the tenancy and evict Brenda Panchyshak and John Murray (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on March 6, 2023. The Landlord, the Landlord's legal representative, S. Pereira, the Tenants, J. Murray, and the Tenants' legal representative, L. Branje, attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I find it would not be unfair to postpone termination of the tenancy to May 31, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The Tenants reside in a three-bedroom unit in a house. The basement is tenanted.

## **N12 Notice of Termination**

### **Landlord's Own Use**

4. On June 23, 2022, the Landlord gave the Tenants an N12 notice of termination with the termination date of August 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by his son, A. Nikolov (AN).
5. The Landlord has compensated the Tenants an amount equal to one month's rent by August 31, 2022.
6. The Landlord filed a declaration from AN with the application.

### **Good Faith**

7. AN testified that he intends to move into the rental unit because his parents require his current home. He has a spouse and a 21-year-old adopted son. He resides in a small bungalow that his parents own. His parents need to move into his home because his father has bad knees and cannot navigate the stairs at his current home. He testified that he would move into the rental unit immediately and will live there long-term and not less than one year. He wants to move into the rental unit as it is the smallest one his parents' own.
8. His father previously served an N12 Notice on the Tenants before the N12 that is the subject of this application. That was because in February 2021, he was having marital issues and believed he needed to live in the rental unit if he and his spouse separated. However, the marital issues resolved at the end of February 2021, and his father advised the Tenants that they were no longer proceeding on the Notice.
9. The Landlord also testified that he currently resides in a large 5-bedroom backsplit that has multiple stairs. He has bad knees, and his wife has arthritis, and they want to downsize to a one-floor home. As such, he will be moving into AN's current home. He also testified that his son requested that he move into the rental unit due to his marital issues in February 2021. As such, he served an N12 Notice on the Tenants. However, when the issues resolved, he advised the Tenants via email to disregard the Notice on June 2, 2021. Submitted into evidence were medical documents regarding the Landlord's knee problems.
10. The Tenants disputed that the Landlord's son's good faith intent because the Landlord has a smaller rental unit available, contrary to AN's statement. The residential complex has a smaller unit in the basement. In addition, the previous service of the N12 Notice for AN's use establishes that the service of the current N12 Notice is not in good faith. Furthermore, the Landlord made changes to the basement unit, which shows that they will be evicting the Tenants to re-rent it for a higher amount.
11. I have considered this part of my analysis in the context of the prevailing caselaw. Feeney v. Noble, [1994] O.J., No. 2049, 19 O.R., (3d) 762 (Ont. Div. Ct.) says "The test of good

faith is a genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal.”

12. In other words, if a landlord has other available apartments, it does not necessarily mean that they do not genuinely intend to move into the rental unit; this one fact is not necessarily related to the other. Regarding the service of the previous N12 Notice, the believable and credible evidence of AN and the Landlord was that a previous N12 Notice was served due to AN having marital issues which were then resolved. As such, I find that the service and the subsequent withdrawal was reasonable. Furthermore, regarding the Tenants' claim that the Landlord is evicting the Tenants to increase the rent because of the basement renovation, it appears this is speculative only as there was insufficient evidence to support this claim.
13. Based on the foregoing, I am satisfied on the balance of probabilities, that the Landlord's son in good faith requires possession of the rental unit for the purpose of residential occupation and he genuinely intends to reside in the rental unit and for a period of at least one year.

### **Relief from eviction**

#### Section 83(3)

14. The Tenants submit that mandatory relief from eviction is required as the Landlord has attempted to enforce unlawful rent increases and the Landlord reduced the space available to the Tenants without a corresponding rent decrease. These are serious breaches of the Landlord's responsibilities under the *Residential Tenancies Act, 2006* (the 'Act').
15. Subsection 83(3) of the Act provides in part that the Board shall refuse an application for eviction where it is satisfied that the Landlord is in serious breach of their responsibilities under the Act (subsection 83(3)(a)).
16. In order to engage the mandatory refusal of eviction under subsection 83(3)(a), the Landlord must be in serious breach of the Act, and that breach must be continuing at the time of the hearing.
17. Although I agree with the Tenants that unlawful rent increases and reduction of space without a corresponding rent decrease may be breaches of the Act, the behaviour the Tenants complain of is not a "serious" breach within the meaning of s. 83(3)(a). I say this because if the Legislature had intended for every breach of the Act to mandatorily disentitle a landlord from evicting a tenant, the word "serious" would not have been used. In other words, to result in mandatory relief from eviction the breach complained of must be sufficiently egregious that refusal of a landlord's basic right to access the eviction process under the Act is a reasonable result. In my view, the breach complained of here does not

rise to that level. The Tenants submitted that they already filed an application, which is the appropriate forum for these issues.

Section 83(2)

18. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of 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.
19. I considered that this is a long-standing tenancy which commenced in 2003. I also considered that the Landlord has health issues that make it difficult to navigate their current living arrangement. In consideration of the foregoing, I find it would not be unfair to postpone termination of the tenancy. This will provide the Tenants some time to organize their move.

**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 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.

**March 28, 2023**

**Date Issued**

\_\_\_\_\_  
Camille Tancioco

Member, Landlord and Tenants 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 Tenants 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.