



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

**Citation:** Abrahams v De vos, 2023 ONLTB 25571

**Date:** 2023-03-21

**File Number:** LTB-L-001423-23

**In the matter of:** Basement, 7A LLOYD GEORGE AVE  
ETOBICOKE ON M8W 3W3

**Between:** Christine Liverance Landlord  
Jacob Luke Abrahams

**And**

Annesu De vos Tenants  
Benjamin De vos

Christine Liverance and Jacob Luke Abrahams (the 'Landlord') applied for an order to terminate the tenancy and evict Annesu De vos and Benjamin De vos (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 Landlords' Legal Representative Tigran Sandukchyan, the Landlords and both of the Tenants attended the hearing.

**Determinations:**

Preliminary issue:

1. Prior to the commencement of the hearing, the Tenants requested that this matter be adjourned as they had conferred with a lawyer and he was out of the country and unable to review anything.

2. The Tenants filed a copy of an email communication from Jora Kuner dated February 16, 2023 stating that the Tenants “intend to retain” his office and if the Tenants are able to request an adjournment of the hearing, provided his availability which would not be until April 28, 2023.
3. The Landlord’s Legal Representative opposed the adjournment request stating that this matter was granted a shortened hearing time because of the Landlord’s family circumstances and that an adjournment would severely prejudice the Landlord. If the matter was to be rescheduled, it would then not be re-scheduled for quite some time.
4. I considered the case of *Lacroix v. Central-McInlay International Limited*, 2022 ONSC 2807 (CanLII) (Div. Ct.) (*‘Lacroix’*), where the Divisional Court found that “parties are entitled to be represented by counsel before the [Landlord and Tenant Board]. However, they are not required to be represented by counsel, and a great many parties before the LTB are selfrepresented. In denying the tenant’s appeal, the Divisional Court concluded at paragraph 16: “it was the tenant’s obligation to attend the hearing ready to proceed”. The Court’s conclusion in *Lacroix* is consistent with the Court’s earlier finding in *Q Res IV Operating GP Inc. v. Berezovs’ka*, [2017], O.J. No. 4863 (Div.Ct.)
5. Having considered the reason for the adjournment request, the position of the parties, the issues in the application, the history of the proceeding, and any prejudice that may result from granting or denying the request, the adjournment was denied.
6. I stood the matter down for an hour to allow the Tenants an opportunity to further prepare for the hearing. This hearing then commenced at 10:32 a.m.

L2 Application:

7. On December 30, 2022, the Landlord gave the Tenants an N12 notice of termination for the Landlord’s use. The termination date on the N12 notice was February 28, 2022. The termination date was a typographical error as it was meant to be 2023 and not 2022.
8. The Landlord tendered into evidence a letter that accompanied the N12 notice which was on top of the N12 notice stating that the termination date was February 28, 2023. The Tenant, Annesu De vos (*‘ADV’*) acknowledged and agreed that she had understood the notice of termination to be February 28, 2023.
9. The Landlords 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 father of the Landlord, Doug Liverance, who personally requires the rental unit certifying that he in good faith requires the rental unit for his own personal use for a period of at least one year.
10. The Landlord, Christine Liverance (*‘CL’*) testified that her father has been diagnosed with a serious medical condition, has issues with walking and needs assistance with his daily activities. CL testified that her father currently lives in a townhome which has stairs and he also cannot reside in CL’s house as she has stairs leading to and from the bedroom levels and washroom. By having her father living in the basement rental unit, she can easily care

for her father and her father would not have to traverse stairs to access his bedroom or bathroom on a daily basis.

11. CL also testified and provide documentary evidence to support that she is pregnant, expecting her child in June, 2023 and she will have one bedroom occupied by her child. CL submits that she will not be in a position to drive distances to care for her father in a separate residence with a newborn as well.
12. CL tendered into evidence correspondence from Dr. Narine, a medical physician at Mount Dennis Weston Health Centre dated December 28, 2022 which states:

Please be advised that Christine Liverance will need to look after her father due to a serious medical condition. She urgently needs the space in her house to care for him. Her father needs to come live with her as soon as possible.
13. The Tenants' position is that CL does not intent to have her father live in the unit because the basement contains stairs and the Landlords father has difficulty traversing stairs and that if the Landlords' father requires someone to look after him, he should be receiving proper medical care. The Tenants submit that the Tenant's father would be happier living on the main level of the residence and that the Tenants are lying as their true intentions are to renovate the rental unit and then charge a higher rent.
14. The Tenants also submit that there are a number of procedural issues pertaining to this application but did not provide further details regarding what the procedural issues were. As well, the Tenants submit that the state of the laundry room is such that it is not good to live in stating that there was insulation within the walls in the laundry room. CL stated that the wall has pink insulation and that there is a standard plastic covering the pink insulation in the laundry room which is not meant to be a place where someone lives in.
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 and/or the landlord's family members.

Analysis:

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. Based on the evidence and submissions before me, and on a balance of probabilities, I find that the Landlords have a genuine intent to occupy the property for the purpose of residential occupation by their father for at least one year.

### *Compensation*

20. 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.
21. CL testified that the one months' rent compensation was compensated as no rent was expected for the month of January, 2023 and this was detailed in her correspondence to the Tenant dated December 20, 2022, which was attached to the N12 notice. The Tenants did not pay rent for January, 2023 as a result.

22. I am satisfied, on a balance of probabilities, that the Landlord did provide the Tenants with compensation required for the N12 notice by compensating them for the rent in the amount of \$2,500.00 which would have been due for January, 2023. I further find that by doing so, the Landlord has satisfied the requirement under s.48.1 that they “compensate” the Tenants.

*Discretionary Relief from Eviction*

23. 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 April 15, 2023 pursuant to subsection 83(1)(b) of the Act.

24. The Tenants have lived in the rental property for approximately 3 years. The Tenants' have stated that they are having financial difficulties, are hoping for assistance from the rent bank and Tenants' requested that they be allowed 6 months to locate alternative housing. The Tenants submitted that COVID has impacted them and they have no-one to assist them as their family members are all overseas.

25. The Landlord indicated that the Tenants have already been given several month's to locate alternative housing, that the Landlords' evidence was concise, that CL's father is ill and urgently needs the space in CL's house so that CL can care for him. As evidenced by the medical documentation, CL's father needs to come live with CL as soon as possible.

26. In considering the circumstances, I find it would not be unfair to postpone eviction until April 15, 2023. I have balanced the Landlord's needs with the effect on the Tenants. It is anticipated this will provide the Tenants with time to receive some funds and make arrangements to vacate the unit and locate alternative housing and will also provide the Landlords with time to make arrangements to have their father move into the rental unit.

27. 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 Tenants is terminated. The Tenants must move out of the rental unit on or before April 15, 2023.
2. If the unit is not vacated on or before April 15, 2023, then starting April 16, 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 April 16, 2023.
4. The Tenants shall also pay the Landlords compensation of \$82.19 per day for the use of the unit starting April 16, 2023 until the date the Tenants move out of the unit.

**March 21, 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 October 21, 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.