



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

**Citation:** YU v ZARGAR, 2023 ONLTB 26066

**Date:** 2023-03-20

**File Number:** LTB-L-058941-22

**In the matter of:** 47 ANTHONY ROMAN AVENUE  
MARKHAM ONTARIO L6C0P3

**Between:** JIAN YU Landlord

**And**

MAHMOOD ZARGAR Tenant

JIAN YU (the 'Landlord') applied for an order to terminate the tenancy and evict MAHMOOD ZARGAR (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 March 8, 2023.

Only the Landlord, his interpreter Meiling Xue, witness Weijian Yu and representative Yun Yan Li attended the hearing.

Mary Xiuling Wang later joined the hearing from the Ministry of the Attorney General to provide official interpretive services.

As of 9:46 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations and Reasons:**

Preliminary Issue – Interpretive Services

1. On the date of the hearing, the Landlord's representative advised that Meiling Xue would provide interpretive services for the Landlord; between the languages Mandarin and English. She completed an oath and after significant questioning identified herself as the partner of the Landlord's son.
2. However, it became apparent that the Landlord and the interpreter carried on independent conversation beyond what was being asked by way of questioning. On one occasion, the interpreter leaned out of view of the camera and proceeded to have a conversation with the Landlord. When asked what was said, the interpreter, in my view, was unable to provide a fulsome answer.
3. On many occasions, the Landlord was unable to provide answers to the questions being translated by the interpreter.
4. I indicated to the parties that I questioned the authenticity of the interpretive services and due to the length of time taken at the hearing, with minimal progress, I stood the matter down as not to cause further delay with other matters before the Board.
5. When the matter was recalled, Mary Xiuling Wang from MAG joined the hearing to provide official interpretive services, and the hearing proceeded without issue.

N12 Notice of Termination – Landlord's Own Use

6. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy shall be terminated as detailed below.
7. The Tenant is in possession of the rental unit.
8. The rental unit is single family townhouse and the Tenant occupies the whole home.
9. On June 13, 2022, the Landlord served the Tenants with an N12 notice to terminate the tenancy effective August 31, 2022. The Landlord indicated that he requires the rental unit for use by his son.
10. As per s.72(1) of the Act, the Landlord filed with the Board a declaration from the Landlord's son who intends to reside in the rental unit for no less than one year.
11. The Landlord has complied with s.48.1 and 55.1 of the Act by providing the Tenant with compensation equivalent to one months rent on or before the date of termination specified in the notice of termination. The Landlord compensated the Tenant by way of cheque, dated June 13, 2022 and the Tenant cashed the cheque on August 8, 2022.
12. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement set out in s.48(1) of the Act which provides:

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,

(c) a child or parent of the landlord or the landlord's spouse;

The Landlord's Good Faith Intention

13. The onus is on the Landlord to establish that the Landlord in good faith require the rental unit for the purpose of residential occupation.
14. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:  
the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...
15. Thus, the Landlord must establish that they genuinely intend to use the rental unit as detailed in the N12 notice. The Court also held in *Salter* that the Landlord's motives are "largely irrelevant".
16. It was the uncontested testimony of the Landlord that he would like to move his son into the rental unit. His son has graduated from university and must now begin to look for a job. The rental unit is ideally located in the Toronto area; where the son hopes to find employment.
17. Weijian Yu, witness for the Landlord and his son testified that he graduated from Western University in October 2022 and wants to move into the rental unit in the Toronto area as that region is the focus of his career search. He currently lives with his parents in Kingsville, near Windsor On, which is about a four hour commute to the GTA. He testified that he will move into the rental unit once vacant possession is returned to the Landlord. He also testified that he plans to live in the rental unit no less than one year and understands the consequences if he fails to move into the unit as specified on the N12 notice.

The Intention of the Landlord

18. The matter before me is whether the Landlord served the Tenants with an N12 notice in bad faith and if the Landlord intends to allow his son to move into the rental unit.
19. The reasonableness of the Landlord's intention is not for the Board to determine, rather the consideration is the sincerity of the intention for possession. The case of *McLean v. Mosher* (1992), 1992 CanLII 7625 (ON SC), 9 O.R. (3d) 156 (Ont. Gen. Div.) stated:

A landlord need not establish that his requirement is reasonable, only that he bona fide wanted and genuinely had the immediate intention to occupy.

20. I find therefore that the reasonableness of the Landlord's intention to move his son into the rental unit not relevant to the issues of intention or good faith.
21. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony nor the son's testimony. I am therefore satisfied on a balance of probabilities that the Landlord, in good faith, require possession of the rental unit for the purpose of residential occupation and that he intends to move his son into the rental unit for a period of one year.

Relief from Eviction

22. I turned my mind to the circumstances of the Tenant.
23. The Tenant did not attend the hearing to testify or defend his position.
24. The Landlord has no knowledge of the Tenant's circumstances.
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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
26. This order contains all of the reasons for the decision within it. No further reasons shall 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 March 31, 2023.
2. If the unit is not vacated on or before March 31, 2023, then starting April 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 April 1, 2023.

**March 20, 2023**

**Date Issued**

\_\_\_\_\_  
Dana Wren

Member, Landlord and Tenant Board

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

**File Number:** LTB-L-058941-22

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 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.