



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

**Citation:** Strigachov v Feng, 2023 ONLTB 20750

**Date:** 2023-02-16

**File Number:** LTB-L-027129-22

**In the matter of:** 40 CASTLE PARK BLVD VAUGHAN  
ON L4H1M4

**Between:** Maxim Strigachov Landlord

**And**

Jian Wen Tenants  
Xueling Feng

Maxim Strigachov (the 'Landlord') applied for an order to terminate the tenancy and evict Jian Wen and Xueling Feng (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 Tenant remained in the unit after the termination date.

This application was heard by videoconference on January 19, 2023.

The Landlord, the Landlord's legal representative, D. Myers, the Tenants, and the Tenants' legal representative, B. Lue Sang, attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. **N12 Notice of Termination**

On May 12, 2022, the Landlord mailed the Tenant an N12 notice of termination, and it was deemed served on May 17, 2022, 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 spouse's child, Dennis Sirotkin (DS).

4. It is undisputed that the Landlord has compensated the Tenant an amount equal to one month's rent by August 31, 2022.
5. The Landlord's wife, T. Kreinin, has a son who currently lives with them.
6. The Landlord testified that his stepson, DS, will move into the rental unit, a three bedroom townhouse in Vaughan, in order to commence his adult life. He is 20 years old. He said that DS will live there for an indefinite period of time.
7. The Landlord said that DS is a student at Ryerson University. The Landlord also said that he owns two rental properties besides his own house. The house where DS intends to live is a house he is familiar with because he lived there as a child. The Landlord said that DS requires a three bedroom house because he needs different rooms for his many computers. He also said that the other rental property he owns is not suitable for DS because he never lived there, and it is only a small house.
8. The Landlord said that he will not charge DS any rent, but DS will be paying expenses for the property such as utilities.
9. DS said that he wants to move into the rental unit because he is familiar with it, and it is in a safe neighbourhood. He said that he wants an independent life in a familiar neighbourhood. He said that it does not matter that the house is so far from downtown, and the university, because he does not mind commuting for about an hour to get to his classes. He said that he only expects to attend classes about twice per week. He said that he also works about 30 to 35 hours week at a pharmacy near to where he currently lives. DS said that it is a 25 minute drive from where he is living now, and about the same from the rental unit.
10. DS was vague about how long he intends to live in the rental unit. He said he has about 1 ½ years of university left, in which he intends to stay in the unit, and afterwards he will "see how it goes". He also said that he does not care that the rental unit is so far from downtown because the move is about adulthood and independence.
11. The Tenants testified that they do not believe that DS is, in fact, moving into the rental unit. They submitted into evidence a number of maps that show how long a commute it would be for DS to get downtown to the university by either subway or by driving. They said that it could be an hour or 90 minutes. They also believe that the three bedroom, three bathroom, 1700 square foot townhouse is too big for a student.
12. The Tenants said that they have looked for alternative places to live, and they would have to pay \$1,500.00 more for anywhere nearby that is comparable. They have lived in the unit

for almost eight years. They said that they love the house, it is convenient for commuting to their work at the airport, and they have many good friends and a strong community network nearby. The Tenants are a married couple with a combined income of approximately \$190,000.00. They said that if they are evicted, they would need an extra year to find somewhere suitable to live.

**Reasons and Analysis:**

13. The issue to be determined by the Board is whether the Landlord has satisfied the “good faith” requirement set out in subsection 48(1) of the *Residential Tenancies Act, 2006*, (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 by,
  - (a) the Landlord
  - (b) the Landlord’s spouse
  - (c) a child or parent of the Landlord or the Landlord’s spouse...
14. In the leading case law involving a landlord’s own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.), (*Salter*) a case in which the Landlord filed the application on the basis that he required possession of the rental unit for purpose of residential occupation by his adult son and the son’s family, 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. The case law in this area establishes that the test is determined by considering the intention of the person named in the application. If that person genuinely intends to reside in the unit, then the notice is given in good faith.
16. The Landlord’s evidence, and DS’ evidence, is that DS requires the unit for the purpose of residential occupation by DS so that he can move out of the house where he lives with his parents, and he can live independently.
17. The rental unit is not particularly close to DS’ current home, nor to his current workplace, and it is as far, or further from downtown and DS’ university, than where DS currently lives. It is a three bedroom townhouse in a suburban location, which is hardly the most desirable location for many young university students studying at a university in the city centre. Both DS and the Landlord said that DS will not be paying any rent. The plan for DS to live in the rental unit is not particularly practical for his work and studies, and it is therefore not reasonable. DS will still be substantially financially supported by his parents, and therefore the move is not exactly a means for DS to be independent.

18. However, the test, as stated above in *Salter*, is not reasonableness, but whether DS genuinely intends to reside in the unit. DS said that he is familiar with the house and the neighbourhood, he is comfortable there, and it is credible that a 20 year old university student would be quite happy to live in a large house on his own, especially if he does not have to pay rent.
19. Therefore, on a balance of probabilities, I find that the Landlord and DS' intention to have DS live in the rental unit on his own for at least 12 months is in good faith.

### **Relief from Eviction**

20. The Tenants have lived in the rental unit for a long period of time, and they have built their own community there. However, they have substantial income, and they should be able to find an alternative place to live that is within their means.
21. They have now had over 10 months to find an alternative place to live. The Landlord was seeking costs because of the Tenants' refusal to leave immediately after receiving the N12 notice of termination.
22. The Tenants had the right to remain in the rental unit until the Landlord filed an application and the matter came to a hearing. The Tenants had no control over the length of time it took for the matter to come to a hearing, and there was no emergency presented by either the Landlord or DS that demonstrated a need for immediate possession of the rental unit. Consequently, I do not find that the Landlord has established any reason for the Landlord to be granted costs.
23. The Tenants had not yet found a suitable place to live at the time of the hearing, and due to the amount of time they have lived in the rental unit, and their established residency there, I find that it would not be unfair to give them a bit longer to find somewhere to live that is within their community and within their budget.
24. 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 March 31, 2023 pursuant to subsection 83(1)(b) of the Act.
25. The Landlord collected a rent deposit of \$2,697.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$376.21 is owing to the Tenants for the period from April 25, 2014 to January 19, 2023 .
26. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

### **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 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.
4. If the Tenants do not move out on or before March 31, 2023, the Tenants shall pay the Landlord compensation of \$72.23 per day for the use of the unit starting April 1, 2023 until the date the Tenants move out of the unit.

**February 16, 2023**

**Date Issued**

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Nancy Morris

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 Tenants 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.