



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

**Citation:** O'NEILL v MCGUIRE, 2023 ONLTB 20518

**Date:** 2023-02-14

**File Number:** LTB-L-033034-22

**In the matter of:** 170 JOHN STREET  
EGANVILLE ON K0J1T0

**Between:** PAUL O'NEILL Landlord

**and**

MIKE MCGUIRE and SHANNON MCGUIRE Tenant

PAUL O'NEILL (the 'Landlord') applied for an order to terminate the tenancy and evict MIKE MCGUIRE and SHANNON MCGUIRE (jointly referred to as the 'Tenant' in this Order) 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 February 6, 2023. The Landlord and the Tenant, Mike McGuire, on behalf of both tenants, attended the hearing. The Tenant present spoke with Duty Counsel prior to the start of the proceeding.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and his claim for some of the utility costs. Therefore, the Landlord's application is granted.
2. However, as there are three minor school age children who are resident in the rental unit and who attend schools based on the district in which they currently reside, I have postponed eviction until the end of this school year. I have also provided the Tenant until the end of February to pay the utility costs awarded.

*N12 Notice of Termination – Landlord's Own Use*

3. On May 16, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of July 31, 2022. The Landlord claimed they and their spouse require vacant possession of the rental unit for the purpose of their residential occupation. While there was a dispute over whether the Landlord improperly entered the rental unit to serve the N12 Notice, the Tenant admitted he received the N12 Notice, and allegations regarding form of entry were not issues before me.
4. The Tenant remains in and was in possession of the rental unit on the date the application was filed.

5. The Tenant admits the Landlord compensated the Tenant an amount equal to one month's rent by July 31, 2022.
6. The Landlord testified he initially advised the Tenant they wished to move into the rental unit in April 2021. However, understanding it may be challenging to find a new place to live due to COVID he and his wife made arrangements to live elsewhere and said they would not move in until at least July 1, 2022.
7. In early 2022, the Tenant inquired what the Landlord's intentions were; however, the Landlord's mother was then ill and the Landlord testified he was not in a position to provide an answer.
8. In the spring of 2022, after the passing of his mother, the Landlord and his wife were considering selling the property. Both the Landlord's cousin's daughter and the Tenant's brother were potentially interested. The Tenant submitted the pricing was high due to 'COVID' pricing. Ultimately, the Landlord testified he and his wife sat down, weighed the pros and cons, and decided they would not sell but instead would move in and retire there.
9. On cross-examination the Landlord admitted he and his wife had gone back and forth on whether they should sell or move in.
10. The Tenant testified that the back and forth was confusing and stressful. He relied on the Landlord's attempts to sell to dispute the Landlord's good faith. The Tenant also questioned why the Landlord's spouse's lack of physician in Ontario was no longer an issue when this was initially raised as a concern and why the Landlord could no longer live in their cottage where he asserted they had been living for years.
11. On cross-examination, the Landlord admitted his wife has back issues but testified since her surgery was complete whether she had a physician in Ontario was not an immediate concern and they would go on a waitlist.
12. The Landlord had a home in Quebec and testified he had owned the cottage for 13 years. The Landlord also testified that when they decided not to seek possession in 2021, they made arrangements to live at their cottage year-round. He testified he did his best to semi-winterize it and that it was fun for a year but it is no longer. He testified he is 61 and they have had pipes freeze, are experiencing issues with the septic tank pump, have to bring in potable water, had a power outage the day before the hearing, and must clear snow from a significant stretch of road.
13. The Landlord testified he and his wife wish to move into the rental unit and retire in the town in which the rental unit is located. He denied they have any intention of selling or re-renting the rental unit.

### *Analysis*

14. When a Landlord serves a N12 the Landlord's motivations, or desire to move into the rental unit for twelve months need not be reasonable and are largely irrelevant – what is required is that the Landlord genuinely intends to live in the property. However, where there are other issues, the conduct and motives of the Landlord may be considered as part of the good faith analysis. [*Fava v. Harrison*, 2014 ONSC 3352 (CanLII) at para. 17, citing *Salter v Balijinac*, 2001 CanLII 40231 (ON SCDC)].

15. The Landlord's evidence was clear that he intends to reside in the rental unit and retire there for the foreseeable future.
16. The evidence relied on by the Tenant with respect to the potential sale of the property predated the service of the N12 Notice. The Tenant had no evidence of actions suggesting the Landlord wished to sell or do anything other than live in the rental unit after the service of the N12 Notice.
17. The Landlord was forthright in admitting they had gone back and forth on whether to sell or reside in the rental unit and explained the change in circumstances including regarding his wife's health. I did not find the parties' dispute about particulars surrounding service of the N12 Notice affected the Landlord's credibility with respect to his intention to reside in the rental unit and was satisfied by the Landlord's explanation.
18. As a result, based on the totality of the evidence before me, I find the Landlord in good faith requires the rental unit for residential occupation a period of at least one year.

#### *Section 83 Considerations*

19. The Tenant has been paying rent. Outside of the utility costs, no financial issues were raised.
20. The Tenant has four children who live at home, three of whom are minors and whose schools are determined by the district in which they reside. The Tenant testified he has been looking for alternate accommodations but has had no luck finding a residence that will accommodate his family, is in the same school district, and is at a price they can afford.
21. The Tenant asked to delay eviction for as long as possible. In particular, he was concerned about disrupting his children's schooling. He testified that one child is in their second last year of high school and another is in their second last year of middle school. Ideally, he wished to stay until they both graduated from these institutions – approximately a year and a half.
22. The Landlord testified it has become onerous to maintain and live at their cottage, particularly in the winter. They must bring in potable water, recently experienced pipes freezing and are having issues with their septic tank. The Landlord was amenable to providing the Tenant until the end of the school year but did not wish to spend another winter in their current residence.
23. The Landlord is entitled to reside in their property. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and to ensure that the Tenant's children's schooling is not interrupted mid-year, I find it would not be unfair to postpone eviction until June 30, 2022, pursuant to subsection 83(1)(b) of the Act. I do not think it appropriate to delay eviction for another year after that.
24. The Landlord is holding a last month's rent deposit in the amount of \$950.00. This will be applied to the month of June 2023. In addition, the Landlord shall credit any interest owing on this deposit to the Tenant as ordered below.

*Utility Costs*

25. The Landlord claims the Tenant failed to pay utility costs they were required to pay under the terms of the tenancy agreement for water and sewage in the total amount of \$1,144.56. The Tenant admits he agreed to pay and owes utility costs.
26. The water and sewage costs for 2022, including interest, were transferred to the Landlord's property tax bill in the amount of \$901.73. The Landlord has not yet paid these amounts, but they are now on his property tax bill.
27. The Landlord also presented a water and sewage bill for \$242.83 dated January 2023 and testified the account for February 2023 had not yet been received but estimated what it would be. The Landlord testified he will also be required to pay these amounts.
28. The Tenant testified the cost of propane has increased significantly and he encountered unanticipated funeral expenses for a sibling. He was candid in admitting he owes the utilities and intends to pay. He testified he regrets that costs were transferred to the property taxes.
29. Based on the above evidence, I do not find the Landlord has proven that they will necessarily incur the utility costs on the bill for January 2023 nor have they proven what the utility costs were for February 2023.
30. As a result, I find the Landlord will incur reasonable out-of-pocket expenses in the amount of \$901.73 and an order will issue for the Tenant to pay the Landlord this amount. Given the amount in issue, the testimony of the Tenant, and the fact that interest is not added to the amount outstanding on the property taxes until the 1<sup>st</sup> of the month, I have delayed the start of interest running under this Order until February 28, 2023.
31. This order is without prejudice to the Landlord bringing a future application for any reasonable out-of-pocket expenses incurred with respect to utility costs after the amount transferred to the property taxes, including the amounts on the January 2023 invoice and for February 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated as of June 30, 2023. The Tenant must move out of the rental unit on or before June 30, 2023.
2. If the unit is not vacated on or before June 30, 2023, then starting July 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 July 1, 2023.
4. The Tenant shall pay to the Landlord \$901.73, which represents the reasonable out-of-pocket expenses the Landlord has or will incur as a result of the unpaid utility costs. Any interest the Landlord owes the Tenant on the rent deposit is to be deducted from the amount owing to the Landlord by the Tenant.

5. If the Tenant does not pay the Landlord the full amount owing on or before February 28, 2023, the Tenant will start to owe interest. This will be simple interest calculated from March 1, 2023 at 5.0% annually on the balance outstanding.

**February 14, 2023**  
**Date Issued**

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Rebecca Case  
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 January 1, 2024 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.