



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

**Citation:** Trimmeliti v Lambe, 2023 ONLTB 15550

**File Number:** LTB-L-020008-22

**In the matter of:** 126 KILLINGTON AVENUE KLEINBURG  
ON L4H3Z6

**Between:** Alesandra Trimmeliti Landlord

**And**

Cindy Trudeau Tenants John Lambe

Alesandra Trimmeliti (the 'Landlord') applied for an order to terminate the tenancy and evict Cindy Trudeau and John Lambe (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 January 10, 2023.

The Landlord and the Tenants attended the hearing. The Landlord's Legal Representative M Sturino was also present. The Tenant Cindy Trudeau left the hearing in between.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated effective June 30, 2023.
2. The Landlord served the Tenant with the N12 Notice of Termination on March 25, 2022 deemed served on March 30, 2022. The termination on date on the N12 notice is May 31, 2022. The N12 was served for Landlord's own use.

3. The rent is due on the 1<sup>st</sup> of every month. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Tenant JL requested an adjournment at the start of the hearing since his legal representative, who he retained the day before the hearing on January 9, 2023, could not be there due to prior engagements. I denied the adjournment request on the basis that the Tenant was present at the hearing and he did not take reasonable steps to retain a legal representative in timely manner.
5. I offered the Tenant the options of either proceeding that day after speaking to Tenant Duty Counsel or asking if his representative could attend the hearing later in the day. The Tenant rejected the options presented to him and remained adamant that the matter be adjourned for another day when the legal representative is available.
6. As explained above, the adjournment request was denied. I provided the Tenant with some additional time to prepare for the hearing and heard the matter later in the day.

Landlord's Own use application

7. The Landlord testified that she had served the Tenants the N12 notice as she was getting married in summer of 2022 and wanted to move into her own house and start her married life with her partner.
8. The Landlord is currently living in her parent's cramped basement as a newlywed where all her brother's stuff is stored as well. Every time her brother visits, she also must share the basement with him and his family, giving her no space to enjoy her life with her partner. She also testified that she intended to live in the house for more than one year.
9. The Tenants denied getting a N12 notice in or around March 30, 2022 and alleged bad faith on the Landlord's side on serving the N12 on them.
10. The Tenant JL testified that the Landlord has served them seven verbal or written notices of termination of tenancy since they started the tenancy. He further added that the Landlord has given them several reasons for those notices in the past, including financial hardships and relationship problems. The Landlord did serve a N12 on them in September 2021 for which a hearing was held by the Board in May 2022 which the Landlord abandoned. The application number for that file is LTB-L-014809-22.
11. This N12 was not mentioned on the L2 application filed by the Landlord and on questioning the Landlord's Legal Representative stated it was a clerical error by her office. The Landlord's Legal Representative also stated that even though the last file was dismissed as abandoned, they had requested a withdrawal with the Board. I did not find any withdrawal request in the system neither did I find a request to amend the order as

stated by her. I find that the Landlord's Legal Representative either did not have her facts right or was misleading the Board with these claims.

12. The Tenant JL also testified that since they did not receive any N12 this time they were shocked when they received a notice of hearing from the Board in December 2022. The Landlord's Legal Representative questioned the Tenant about accepting compensation equivalent to one month's rent in May 2022 from the Landlord. The Tenants acknowledged receiving the compensation from the Landlord as a e-transfer in May 2022. The Tenant stated that he thought it was for the last case the Landlord did not show up for.
13. The Tenant CT raised an issue about the Landlord putting the house up for sale without their knowledge back in 2016 but that was dismissed as an unrelated issue and it did not reoccur.
14. The Tenant also tried to testify about Landlord's personal relationships before her marriage and the Landlord objected to having her personal life talked about publicly. There was also testimony related to the rental unit being previously owned by two individuals and that the Landlord had told the Tenants that she had purchased the property.

### Analysis

15. The Tenant testified that he did not receive the N12. The Landlord's Legal Representative stated that her office had mailed the N12 to the rental unit on March 25, 2022 deemed served on March 30, 2022. I accept the Landlord's evidence and therefore find that it was sufficiently given to the Tenant in accordance with s.191(f) of the Act. There is no reason that the Tenant would not receive the N12 as stated in the certificate of service and validated at the hearing by the Landlord's Legal Representative. I find based on the evidence before me that the N12 was served to the Tenants and there is no evidence provided to prove otherwise.
16. In this application, the burden of proof lies with the Landlord to establish that the Landlord, in good faith, requires the rental unit for the purpose of residential occupation.
17. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 C anLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...'. The Divisional Court also stated that the Landlord may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlord.
18. While the good faith of the Landlord remains the test to be applied, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives ( *Fava v. Harrison* [2014 ONSC 3352](#) (ONSC DC).

19. The Landlord's testimony that she needs the rental unit for her to start a new life as a married woman for longer than a year, which is believable. The Landlord further testified that her previous N12's were based on her previous relationships or financial position but this time this N12 is based on marriage and not a relationship. Based on the evidence before me, I accept the Landlord's explanation that she wants to move into the rental unit herself with her husband and start a new life.
20. While I find the Tenants' testimony credible and believable, the Tenant JL acknowledged that the Landlord informed him of her marriage sometime in September of 2021 when she came to serve the first N12. This first N12 was served incorrectly and did not follow the Board rules as required for a notice of termination so the Landlord served another N12 to the Tenants, this time following the correct procedures. The Tenant mentioned that the Landlord has asked the Tenants previously to vacate the rental unit but there was no N12 served, all those discussions were verbal as per the Tenants. As mentioned above those threats to vacate were based on the Landlord's previous relationships and never materialized coz the relationships failed.
21. I do therefore find based on a balance of probabilities that the Landlord requires possession of the rental unit in good faith and for a period of one year or more.
22. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022.
23. The Tenant was required to pay the Landlord \$13,992.33 in daily compensation for use and occupation of the rental unit for the period from June 1, 2022 to January 10, 2023. The Tenants have been current with their rent payments, so no compensation is due.
24. The Landlord collected a rent deposit of \$1,800.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$235.45 is owing to the Tenant for the period from November 1, 2014 to June 30, 2023.

*Relief from eviction*

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 not be unfair to postpone the eviction until July 31, 2023 pursuant to subsection 83(1)(b) of the Act.
26. JL testified that as a single breadwinner with a sick wife plus a special needs child he has a lot of financial pressure on him and uprooting them from the rental unit would cause a lot on unnecessary mental and financial strain on the family. He feels the pressure could cause his wife's health to deteriorate. I sympathise with the Tenants' circumstances and am willing to grant them additional time to find suitable accommodation.

**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 July 31, 2023.
2. The Tenant may vacate the rental unit earlier than the termination date by serving the Landlord a 10 day notice.
3. As of the hearing date, the total amount the Landlord owes the Tenant is \$3,347.32. This includes the last month's rent deposit in the amount of \$1,800.00 and interest on the last month's rent deposit from November 1, 2014 till January 10, 2023 in the amount of \$235.45. The Landlord also owes the Tenant rent paid from January 11, 2023 till January 31, 2023 as the Tenant has already paid rent for entire month of January 2023.
4. The Landlord may deduct from the amount set out in paragraph three \$62.47 per day for the use of the unit starting January 11, 2023 until the date the Tenant moves out of the unit. This amount is calculated as follows:  $\$1900 \times 12$ , divided by 365 days.
5. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.
6. If the unit is not vacated on or before July 31, 2023, then starting August 1, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 August 1, 2023.

**February 9, 2023**

**Date Issued**

Sheena Brar

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 July 31, 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.