



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

**Citation:** Watters v Wardleworth, 2023 ONLTB 14297

**Date:** 2023-01-06

**File Number:** LTB-L-002790-22

**In the matter of:** Lower Level, 109 Dodson Street  
Kemptville ON K0G1J0

**Between:** Megan Margaret Nicole Watters Landlords  
Joshua Marc Peter Watters  
Lisa Mary Needham

**And**

Jeannie Wardleworth Tenant

Joshua Marc Peter Watters, Lisa Mary Needham and Megan Margaret Nicole Watters (the 'Landlords') applied for an order to terminate the tenancy and evict Jeannie Wardleworth (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 August 8, 2022. All three Landlords and the Tenant and the Tenant's Legal Representative, Linda Tranter, attended the hearing.

**Preliminary Issue – Adjournment Request**

1. At the onset of the hearing, the Tenant requested an adjournment on the basis that sitting for extended periods of time would cause discomfort and significant pain.
2. The Landlords were opposed to the request on the basis that they had also been waiting a significant amount of time to have their matter heard and because they are anxious to get a decision regarding Megan's living situation.
3. The adjournment request was denied. The Tenant would be able to fully participate given that she could take as many necessary breaks to move around and minimize her discomfort. Since the same could be said for any hearing date the parties would have to attend, whether it be on the current date or a future date, there was little reason to adjourn the matter for the same result on the next hearing date.

**Determinations:**

4. On October 29, 2021 the Landlords served the Tenant with an N12 notice of termination which set out that the Landlords intended to reside in the rental unit for personal occupation. The termination date in the notice is December 30, 2021. Since the rental

period runs from the last day of the month until the first day of the following month, I am satisfied that the termination date is correct and that the minimum 60 days notice has been provided to the Tenant.

5. In accordance with section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') the Landlord must compensate the Tenant an amount equal to one month's rent. Section 55.1 of the Act requires that the compensation be paid by no later than the termination date in the notice. There was no dispute that compensation of one month's rent had been paid to the Tenant on July 22, 2021 for \$750.00. This compensation was paid for the previous N12 notice that the Landlord served, which was found to be defective on a termination date technicality (see order EAL-96622-21). I find that compensation has been paid in accordance with the Act.
6. The Landlords have also met the requirements under subsection 72(1)(a) of the Act by filing with the Board a declaration which details that the person intending to occupy the rental unit, in this case, Meghan Margaret Nicole Watters (MW), intends to occupy the rental unit for a period of at least one year and in good faith.
7. In addition to the declaration, MW testified that she intends on taking up residence in the rental unit and that she has been anticipating moving out from her parent's place to gain her independence. She plans on staying in the unit for at least a year and likely longer. She further testified that she lacks privacy at home and has to share a bathroom and that she is part owner of the property and intends on living in the investment property she contributed to purchasing. That the housing costs would be nominal considering she has a mortgage for her portion of the housing cost and it makes more sense than to rent somewhere else and have to pay for the house too. She had recently graduated from university and was looking for online work, or to check out her prospects of employment in Ottawa.
8. The Tenant disputes that the Landlord has a good faith and genuine intention to occupy the rental unit on the basis that it is a basement unit and is damp, cramped, small and there is a rat issue that has not been resolved. Also because she felt that the real estate transaction was a hoax because it was purchased from the Landlords' grandfather. Also because the Landlords grandfather had indicated that she could stay in the property for 9-10 years and that if he ever sold it, that it would be to his children and grandchildren and she could likely stay in the unit in that case.
9. In response to the Tenant, the Landlords provided evidence regarding treating the unit for rats and that they hadn't been aware that the rats were inside of the house. They understand the size and scope of the basement as they had been in the rental unit once before and that the size is what is attractive to MW. It was the Landlords' position that they paid a fair market price for the property and had intended to take over the Tenants unit after her four-year lease term was up.

## Analysis

10. The courts have provided much guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.

11. 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”.

12. 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.

13. 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.”

14. Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord has a genuine and good faith intention of occupying the rental unit for at least one year.

### **Discretionary Relief from Eviction**

15. The Tenant has resided in the unit for 4 years. She suffers from pain as a result of a spinal fracture and a toe fracture in 2022. The same toe was fractured again in July of 2022. The Tenant at the time of the hearing was waiting for an MRI to determine her suitability for surgery. The Tenant indicated that it would take about 5-6 months to heal after the surgery

and requested that she be given until the Spring of 2023 to move if I found in favour of the Landlords. The Tenant indicated that she has mobility issues and that she has nobody close by to help her move and she is on a limited pension income with a disability supplement and that there is no affordable housing in the area. The Tenant has looked at rentals, but has not applied because they are outside her price range. She has applied for social housing, but the waiting list is long.

16. The Landlord has been anticipating moving into the unit since earlier in 2021. Aside from the sense of independence, the MW currently resides with her parents and has stable housing, albeit it is not private for her.
17. The prejudice to the Tenant is substantially greater than that of the Landlord and I find that a delay is appropriate under the circumstances.
18. 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 15, 2023 pursuant to subsection 83(1)(b) of the Act.

**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 15, 2023.
2. If the unit is not vacated on or before March 15, 2023, then starting March 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 March 16, 2023.

**January 6, 2023**  
**Date Issued**

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Terri van Huisstede  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.