



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

**Citation:** Zimola v Boufernana, 2022 ONLTB 14159

**Date:** 2022-12-16

**File Number:** LTB-L-017659-22

**In the matter of:** App #1, 226 voie HECTOR-HOTTE  
Ottawa ON K1L7Y3

**Between:** Serge Zimola Landlord

**And**

Hicham Boufernana Tenant

Serge Zimola (the 'Landlord') applied for an order to terminate the tenancy and evict Hicham Boufernana (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 18, 2022.

The Landlord and the Tenant represented by Alicia Deea LeRoc attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated, and the Tenants must move out by January 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 28, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of May 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by his son Raphael Medeiros-Zimola.
4. The Landlord in good faith requires possession of the rental unit for the purpose of his son's residential occupation for a period of at least one year.
5. The Landlord has compensated the Tenant an amount equal to one month's rent by May 31, 2022.
6. There is no signed lease, and it is a month-to-month lease. There is no last month's rent deposit.

7. Based on the monthly rent, the daily compensation is \$16.44. The amount is calculated as follows: \$500.00 x 12, divided by 365 days.

### Good Faith

8. The Landlord submitted into evidence Declaration sworn by the Landlord's son Raphael Medeiros-Zimola confirming that he requires the premises in good faith for residential occupancy for no less than one year.
9. The Landlord testified that his 22-year-old son is currently living at home his parents want to move out on his own and start his own life and is entitled to live his own private life. The son just graduated and wants to work in construction.
10. The Landlord testified that he does own several properties, and the son would help manage the complex he is moving into.
11. The Tenant's legal representative argued that the Landlord owns a residential construction business and have several properties. The Tenant's representative stated the unit has issues with the washroom and mold with the unit. The Tenant believes the Landlord's real intention is to renovate the unit, since it is the only unit that has not undergone renovations and rent it out at a higher rate.
12. The Tenant testified that the since a previous hearing, there were complaints to the City and the Landlord had deficiencies.
13. In response, the Landlord testified that renovations were done to the exterior and foundation of the complex and that there are double paned windows and new insulation. That any issues with the unit was due to the Tenants uncleanliness and smoking in the unit. The complaints of the Tenants were addressed, and the corrections were made and confirmed by the city inspector.

### Analysis

14. The issue to be determined is whether 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 as required by s.48 (1) of the *Residential Tenancies Act, 2006* (the 'Act').
15. The leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231, 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. Furthermore, in *Salter*, 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. However, I may draw inferences about the Landlord's good faith from the Landlord's conduct and motives (*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC)).
16. Therefore, the test before me in this case is whether the Landlord has established a genuine intention to move into the rental unit and occupy it for a period of at least one year.

17. The Landlord's son did not attend the hearing. However, the Landlord testified on his behalf. The Landlord provided consistent, clear and direct testimony with respect to his son moving in. I do not doubt the truthfulness of the Landlord's testimony.
18. The Tenant's position that the Landlord's intention to renovate and re-rent the unit are speculative in nature and have not been substantiated with evidence.
19. The Tenant filed a complaint with the City regarding maintenance issues. The Landlord advised that the issues were addressed and inspected by the City. Based on this evidence the Tenant has not establish that the Landlord is in current serious breach of his obligations under the Act. and therefore, is not a sufficient basis for me to demonstrate that the Landlord is prohibited from ending the tenancy.

Relief from eviction

20. 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 January 31, 2023, pursuant to subsection 83(1)(b) of the Act.
21. Given the Tenant has been living in the unit for 8 years it would find it difficult to find a unit for only \$500.00, I am granting a brief delay in eviction, so the Tenant has to opportunity to find a new unit.

**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 January 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 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 February 1, 2023.
4. The Tenant shall also pay the Landlord compensation of \$16.44 per day for the use of the unit starting September 1st, 2022, until the date the Tenant moves out of the unit.
5. If the Tenant does not pay the Landlord the full amount owing on or before January 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 1, 2023, at 4.00% annually on the balance outstanding.

**December 15, 2022**  
**Date Issued**

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 Nicole Huneault  
 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 August 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.