



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

**Citation:** Stech v Barker, 2022 ONLTB 14179

**Date:** 2022-12-14

**File Number:** LTB-L-027315-22

**In the matter of:** 3, 11 STIRTON ST  
HAMILTON ON L8L6E7

**Between:** Olga Stech, Stefan Stech Landlord

**And**

Adam Barker Tenant

Olga Stech, Stefan Stech (the 'Landlords') applied for an order to terminate the tenancy and evict Adam Barker (the 'Tenant') because the Landlords' in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on September 21, 2022.

The Landlord and their legal representative Roman Andrzejewski, attended the hearing.

The Tenant along with the Tenant's support person Patricia Golden attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year. Therefore, the tenancy is terminated effective October 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 23, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter Larysa Stech.
4. The Landlord has compensated the Tenant an amount equal to one month's rent on February 23, 2022.
5. The Tenant disputes receiving the N12 notice and the compensation cheque. He stated that when he received paperwork from the Landlord he gave everything back to the Landlord.

6. The Landlord testified that because of a previous dismissal of an application she documented everything and took pictures of the cheque and Notice and photographed the envelope and slipped everything under the Tenant's door. The Landlord submitted photographic evidence in support of this. The Landlord stated that the cheque was given on February 23, 2022, but never cashed by the Tenant.
7. I am satisfied based on the photographic evidence and the Landlord's testimony that the Tenant was served the N12 Notice and given two cheques, one for the compensation and the second for interest on the deposit.
8. The Landlord collected a deposit of \$510.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the deposit was paid until April 20, 2022.

#### Good Faith

9. The Landlord O.S. testified that she requires the unit for her daughter Larysa Stech because her daughter L.S. intends to do her graduate studies at McMaster University.
10. The Landlords submitted into evidence a sworn Affidavit from the daughter Larysa Stech made in support of her parents' application. It states that she requires the unit for at least one year while pursuing master's degree at McMaster University in Hamilton.
11. Larysa Stech also testified that she finished her studies in August 2022 and is planning to enrol in the Ph.D. program which would begin in January 2023. L.S. testified that she would have shorter commute to the university from the rental unit than from her parents' home in Mississauga. She testified that she doesn't have money to spend on gas travelling back and forth. L.S. testified that in February 2022 she did not know or had not considered doing her PhD. L.S. also testified that if she is unable to pursue a PH.D. she will take on work or do additional courses.
12. O.S. testified that they currently live in a small 3-bedroom house in Mississauga along with her daughter L.S. and two other adult children. The two daughters share a room, and the son has his own room. The Landlord testified that the distance between the home and university is approximately 50 kms and the rental unit is approximately 6 kms from the University.
13. The Tenant argued that the Landlords own another house on the same street. The rent the Tenant is paying is the cheapest rent from all the units at both locations. The Tenant claimed that the Landlords' intentions are to evict the Tenant and to re-rent it for higher rent. The Tenant testified that the unit is falling apart and that there has not been any work done to the unit. The Tenant questions why the Landlord would allow the daughter to move into the unit in the state it is in.

#### 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 is *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 evidence in this case was clear and consistent and establishes that her daughter genuinely intends to live in the rental unit for at least a year while either attending university or working in Hamilton. L.S. swore an Affidavit which was filed with the application confirming she required the rental unit for her residential use and provided corroborating oral testimony to provide further context.
18. As the Landlords' evidence with respect to their intended usage of the rental unit was not substantively challenged by the Tenant, I accept on a balance of probabilities, that the Landlord in good faith requires the rental unit for residential occupation.

#### Relief from Eviction

19. 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 October 31, 2023, pursuant to subsection 83(1)(b) of the Act.
20. The Tenant has been living at the unit for 11 years and suffers from mental illness. The Tenant has a small support dog that lives with him. This eviction process has forced the Tenant to increase his medication. The Tenant has family that lives in the basement unit of the same residential complex who the Tenant relies upon in his day-to-day living. The Tenant's support person stated that the Tenant relies on O.D.S.P. and has a low income. The Tenant cannot afford higher rent. The Tenant stated that he would have nowhere to go if evicted and would be forced onto the streets.
21. Having regard to these factors, and that an N12 is a no-fault eviction application, I find that a delayed eviction is not unreasonable and will allow the Tenant to seek out any resources and support he may require in order to find a suitable unit.
22. After the Tenant vacates and believes that the Landlord gave the notice in bad faith and the daughter does not move into the rental unit, the Tenant can obtain legal advice in order to file a T5 application at the Board.

#### 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 October 31, 2023.
2. The Tenant shall pay to the Landlord \$2,324.25 from May 1<sup>st</sup>, 2022, to September 21, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

3. The Tenant shall pay to the Landlord \$17.06 per day for compensation for the use of the unit from September 22, 2022, to the date the Tenant moves out.
4. The foregoing amounts shall be offset against rent payments that have been made by the Tenant for any rental periods from May 1, 2022 onwards.
5. If the unit is not vacated on or before October 31, 2023, then starting November 1<sup>st</sup>, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
6. 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 November 1<sup>st</sup>, 2023.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

**December 14, 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 June 26, 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.