



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

**Citation:** Harvey v Robinson, 2022 ONLTB 14288

**Date:** 2022-12-12

**File Number:** LTB-L-010703-22

**In the matter of:** 61 STANLEY ST  
Trenton ON K8V4V4

**Between:** Brianne Harvey-Chard Landlords  
Joseph Harvey

**And**  
Mhisty Robinson Tenant

Brianne Harvey-Chard and Joseph Harvey (the 'Landlords') applied for an order to terminate the tenancy and evict Mhisty Robinson (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.

This application was heard by videoconference on September 8, 2022. The Landlords, their legal representative, L. Mccullough, and the Tenant attended the hearing.

**Determinations:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlords' application is granted.
2. On February 22, 2022, the Landlords gave the Tenant an N12 notice of termination with the termination date of April 30, 2022. The Landlords claims that they require vacant possession of the rental unit for the purpose of residential occupation.
3. The Landlords have filed an affidavit sworn by the person who personally requires the rental unit certifying that they in good faith require the rental unit for their own personal use for a minimum of 1 year.
4. There was no dispute that the Tenant was compensated an amount equivalent to one months rent before the termination date in the notice.

Good Faith:

5. The N12 was served pursuant to Section 48(1) of the *Residential Tenancies Act, 2006*, (the Act) which states in part:

48 (1) A landlord may, by notice, terminate a tenancy if 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 by,

(a) the Landlord.

6. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that a sincere intends to occupy the rental unit. The Landlord may also have additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice."
7. In the more recent case of *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per *Salter*, "largely irrelevant", the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property."
8. The Landlords testified that they recently became parents and wanted to move into the rental unit. Their current residence is approximately 1000 square feet and is a 3-bedroom, 2-bathroom home. Both Landlords are self employed and while one is on maternity leave they plan to sell their current residence and move into the rental unit indefinitely.
9. Both Landlords have a property management company. During the hearing, the Tenant testified that she felt as though the notice was given to her in bad faith because as the Landlords have a property management company, there were other properties that they could move into, or offer to the Tenant.
10. The Landlords submitted that although they have a property management company, the units in which they oversee are not theirs. They are a third-party agent on behalf of the property owners.
11. I will note that the fact that a landlord owns multiple properties, on its own, is not indicative of "bad faith". The courts have also given the Board some direction in this regard (see *Salter* paragraphs 18, 26-27

[26] 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.

[27] 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 standard.

12. I accept the Landlords testimony and find that their intentions to occupy the rental unit are genuine. Therefore, the application is granted, and the tenancy will terminate.

Relief from Eviction

13. 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 15, 2022, pursuant to subsection 83(1)(b) of the Act.
14. The Tenant has lived in the unit since 2015 and living with her are 2 children (11 and 8), the Tenant testified that she has been looking for alternative accommodations, but it is tough with the current housing situation in her current location.
15. The Landlords submitted that they require their rental unit back as soon as possible for their own financial and personal reasons, they also submitted that since the notice was given in February 2022, that the Tenant has had ample time to find alternative accommodations.
16. In consideration of both parties' circumstances, I find this termination date to be appropriate. Although additional time may slightly prejudice the Landlords, their housing is not in jeopardy like The Tenants. Granting a brief extension of time will provide the Tenant some additional time to secure a rental unit and the delay is not so lengthy that would severely prejudice the Landlords.
17. This order contains all of the reasons intended to be given, no further reasons shall issue.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 15, 2023.
2. If the unit is not vacated on or before January 15, 2023, then starting January 16, 2023, the Landlords 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 Landlords on or after January 16, 2023.
4. The Tenant shall also pay the Landlords compensation of \$28.25 per day for the use of the unit starting January 16, 2023 until the date the Tenant moves out of the unit.

**December 12, 2022****Date Issued**\_\_\_\_\_  
Curtis Begg

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 24, 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.