



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

**Citation:** REYES v GONEAU, 2022 ONLTB 13952

**Date:** 2022-12-05

**File Number:** LTB-L-019591-22

**In the matter of:** BASEMENT, 5505 BOURGET DRIVE WEST  
MISSISSAUGA ONTARIO L5R3A4

**Between:** Flor Reyes Landlord

**And**

Paul Goneau, Tenants  
Tahreem Hanan

Flor Reyes (the 'Landlord') applied for an order to terminate the tenancy and evict Paul Goneau, Tahreem Hanan (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on September 8, 2022. The Landlord, their witness, A. Reyes ('AR'), their legal representative, B. Guardado, and the Tenants attended the hearing.

**Determinations:**

1. For the reasons that follow, I find on a balance of probabilities that the Landlord requires possession of the rental unit for the purposes of residential occupation. Therefore, the application is granted, and the tenancy will terminate.
2. The application is based on an N12 Notice of Termination served on the Tenants on September 29, 2021, with a termination date of November 30, 2021. The N12 indicates that the Landlord's parent and Landlord require the rental unit.
3. The Landlords have filed an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a minimum of 1 year.
4. There was no dispute that the Landlord paid the Tenant compensation equal to one month's rent.

**Good faith:**

1. 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;
  - (c) a child or parent of the landlord or the landlord's spouse
2. 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."
3. 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."

#### Landlord's Evidence

4. The Landlord testified that she and her family occupy the upstairs and the Tenants occupy the basement. The Landlord's mother, who lives with her can no longer go upstairs due to her deteriorating health and has been using the family's living room as a bedroom for some time. Essentially, the Landlord wants to use the residential complex as a single-family dwelling and needed the extra space that the basement would provide.
5. The Landlord called on her son AR who submitted that his room was originally in the basement, however due to previous complaints from the Tenants regarding noise, he had been using the upstairs bedrooms. He submitted that he would like to use the basement as a space to entertain family members and use one of the rooms as a possible in-home gym.

#### Tenants' Evidence

6. The Tenants testified that the relationship between them and the Landlord has not been cordial since 2020 and that they believed the N12 was retaliatory as they felt that the Landlord wanted to evict them to get more rental income for the unit. During the hearing

the Tenants went through a timeline of events, outlining why they believed the N12 was served in “bad” faith.

7. The Tenants submitted that there were discussions in August 2020 regarding an illegal increase. The parties agreed that the rent would increase to \$1,100.00 which was a \$50.00 increase starting August 2020.
8. The Tenants also stated that there were incidents throughout the tenancy most of the incidents took place in 2020, but there were 2 other eviction notices given around the same time as this N12 Notice of Termination.
9. The Tenants submitted they were given an N5 on or about October 23, 2020 regarding an incident that took place on October 21, 2020, which was surrounding loud music and the power being turned off maliciously by the Landlord.
10. The Tenants were also given an N7 on or about January 8, 2021, regarding allegations of smoking and other substantial interference (loud noise, slamming doors, etc).
11. Further to the N5 and the N7, the Tenants submitted that there was an incident on May 19, 2021, which resulted in the Landlord’s calling the police. The Landlord submitted that the reason they had called the police was because there was a smell that made the AR feel lightheaded, and so the police came to investigate the smell.

## Analysis

12. The Landlord has established on a balance of probabilities that the Landlord and their parent genuinely intends to move into the rental unit and live there for at least one year. Therefore, the Landlord in good faith requires possession of the rental unit for a period of at least one year.
13. Although, I accept the Tenant’s evidence that the relationship between the Landlord and the Tenant had broken down and had not been in a good place for quite sometime, I do not find that the N12 was served in retaliation of the Tenants trying to enforce their legal rights. I say this because I must consider the timing of these events in relation to the service of the N12.
14. The illegal rent increase in August 2020, was mutually agreed to by the parties, and the Tenants paid that increase for an entire year. Most of the other issues were in 2020, which were a full year prior to the service of the N12.
15. I also accept the Landlord’s evidence that her mother is elderly and may not be in the best of health. Also, during the hearing the Landlord physically took the device she was using to participate in the hearing and showed me her mothers living quarters.

16. Also as mentioned above, 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,” and that the Landlord’s motives for serving the notices are largely irrelevant.
17. I find that the Landlord has a genuine intention to occupy the premises for a period of at least one year, I also find that although the Landlord’s and Tenant’s relationship was not the best, the reason for the notice was not retaliatory. Therefore, I find that the notice was given in good faith and the therefore the tenancy will terminate.

### **Relief from Eviction**

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 January 4, 2022 pursuant to subsection 83(1)(b) of the Act.
19. This tenancy started in 2013, and one of the two Tenants is currently pregnant. Although there has been sometime since the hearing, I am of the view some additional time is appropriate given the length of tenancy, the Tenants circumstances. Although delaying the termination of the tenancy may cause the Landlord some prejudice, they are not in a position where finding alternative housing is of issue.
20. In consideration of both parties’ circumstances, I find this termination date to be appropriate. The Tenants have been granted attritional time to secure alternate accommodations, and the delay is not so lengthy that would severely prejudice the Landlord.
21. This order contains all the reasons intended to be given, no additional reasons shall issue.

### **It is ordered that:**

1. The tenancy between the Landlords and the Tenants is terminated, as of January 3, 2023. The Tenants must move out of the rental unit on or before January 3, 2023.
2. The Tenants shall also pay to the Landlords \$36.16 per day for compensation for the use of the unit from January 4, 2023 to the date they move out of the unit.
3. If the unit is not vacated on or before January 3, 2023, then starting January 4, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.

4. 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 4, 2023.

**December 5, 2022**

**Date Issued**

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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 expires on June 4, 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.