



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

**Citation:** Stolarczyk v Freeman, 2022 ONLTB 11493

**Date:** 2022-11-24

**File Number:** LTB-L-020818-22

**In the matter of:** 5, 113 Lake Crescent  
Etobicoke Ontario M8V1W2

**Between:** Agnes Stolarczyk Landlords  
Wojtek Stolarczyk

**And**

Dave Freeman Tenant

Agnes Stolarczyk and Wojtek Stolarczyk (the 'Landlords') applied for an order to terminate the tenancy and evict Dave Freeman (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 November 3, 2022. The Landlords, the Tenant, and the Tenant's representative, Kathleen Lovett, attended the hearing.

**Preliminary Issues:**

1. The Tenant's representative submitted that the Landlords' response disclosures sent to the Board and to the Tenant less than 5 days before the hearing date should not be considered in accordance with the Board's Rule of Procedure 19.2. The Landlords' acknowledged their late disclosures. I granted the Tenant's request pursuant to the Board's Rule of Procedure 19.2.
2. The Tenant's representative submitted that the Landlords' son's affidavit was void because it lacked particulars, and did not provide the Tenant with sufficient information to prepare for the hearing. I was satisfied that the son's affidavit complied with the requirements of s. 72(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act'), and is therefore valid.

**Determinations:**

1. As explained below, the Landlords have 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 Tenant must move out of the rental unit on or before May 31, 2023.

**N12 Notice of Termination – Landlords’ Own Use**

2. On March 29, 2022, the Landlords served the Tenant an N12 notice of termination, with the termination date of May 31, 2022. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their son, Matthew Stolarczyk. The Landlords applied to the Board to terminate this tenancy on April 5, 2022.

**Daily Compensation & Rent Deposit**

3. The Landlords testified that this is a month-to-month tenancy with a monthly rent of \$1,320.54 paid on the first day of each month, and that the Tenant remains in possession of the rental unit.
4. The Landlords testified that the Tenant has no rent arrears as of the date of this hearing, and always pays his rent on time.
5. Based on the monthly rent, the daily compensation is \$43.42. This amount is calculated as follows:  $\$1,320.54 \times 12$ , divided by 365 days.
6. The Landlords collected a rent deposit of \$1,320.54 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$13.33 is owing to the Tenant for the period from January 1, 2022 to November 3, 2022.
7. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy

**N12 Compensation**

8. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent, or offer the tenant another rental unit acceptable to the tenant, if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.
9. Landlord Agnes Stolarczyk testified that she paid the Tenant one month's rent compensation of \$1320.54 by leaving a cheque for that amount in the Tenant's mailbox on March 29, 2022. The Tenant testified that he received the cheque from the Landlords for \$1320.54, and cashed it a few weeks later.
10. On the basis of the evidence provided, I am satisfied that the Landlords met their obligation to pay the Tenant compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act, by providing a cheque payment to the Tenant of \$1320.54 on March 29, 2022 – before the date of termination of May 31, 2022.

## Good Faith

11. The N12 was served pursuant to s. 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N12 the Landlord required, in good faith, the unit for residential use.
12. 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 the Landlord sincerely 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.
13. 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.

## Landlords' Evidence

14. Landlord Agnes Stolarczyk testified that she has not served a previous N12 or N13 regarding this tenancy, or another unit, within the last two years. The Landlord testified that four years ago she served an N12 to the tenant in another unit of the residential complex, the basement unit, for the purpose of her mother's personal use. The Landlord stated that her mother lived in the basement unit from September 2018 to March 2019. The Landlord explained that her mother slipped and fell on ice in March 10, 2019 requiring hip surgery, and the resulting injury required her to move out of the basement unit. The Landlord submitted a photo of her mother in the hospital and a surgery operative note.
15. The Landlords acknowledged that they own two residential complexes with a total of 11 rental units, and since serving the Tenant with the N12 on March 29, 2022, other units became available, but the Tenant never expressed an interest in those units. The Tenant's unit is one of six in the residential complex. The Landlords remarked that, as of the day of this hearing, they had no vacant rental units available for occupancy.
16. Landlord Agnes Stolarczyk testified that in November 2019 the Landlords had difficulties in adequately clearing the snow in the parking area of the residential complex. A potential solution to this problem was to remove the Tenant's parking spot, but after discussions with the Tenant, this did not occur.
17. The Landlords testified that their son is a young man, currently living in a single room in their family home. The Landlords explained that they purchased the residential complex, in part, for their children's eventual residence, and that they in good faith, want the unit for their son's use. The Landlords noted that the unit is the most affordable unit that meets their son's requirements, and explained that they will not charge their son rent, so the loss of rent would financially impact the Landlords the least. The Landlords added that the unit is on the top floor of the residential complex, therefore it is quieter, a characteristic desired by their son as a result of his sleeping difficulties.

18. The Landlords' son, Matthew Stolarczyk, testified that he is 20 years old, not married, and works as an apprentice electrician throughout the Greater Toronto Area (GTA). The son stated that he currently lives with his parents, but he now has a partner, and wants his own space because he does not have enough room in his parents' home. The son testified further that he wants to live in the unit because he does not drive, and at the unit everything is within walking distance, and he will be close to his friends and to transit. He also explained that the unit is on the top floor of the residential complex, and this appeals to him because he is a light sleeper. The son acknowledged that he is not aware of any other rental units that his parents have available for his residence, nor have they offered him any other units.
19. The son stated that he plans to attend Conestoga College in Kitchener for eight weeks in the spring of 2023, as part of his electrician apprenticeship training, but he will commute to Kitchener with the GO train for the two-month period rather than move because his on-site electrician training will remain in the GTA.
20. Pursuant to s. 72(1)(a) of the Act, Matthew Stolarczyk provided a signed declaration, dated March 28, 2022 declaring his good faith intention to reside in the rental unit for his own personal use for a period of at least one year. Matthew Stolarczyk testified at the hearing that he intends in good faith to move into the rental unit for his own personal use, and to reside there for at least one year.

### **Tenant's Evidence**

21. The Tenant testified that he believes that the Landlords' application to evict him is not made in good faith for four reasons:
  - (a) the Landlords have a pattern of evicting tenants in bad faith;
  - (b) the Landlords' son does not require the unit, and is just being used to evict the Tenant to enable the Landlords to rent the unit at a higher rent;
  - (c) the Landlords never offered the Tenant other units in their two residential complexes when they became available for occupancy; and
  - (d) the Landlords are evicting him because he has attempted to enforce his legal rights throughout his tenancy.
22. The Tenant submitted an affidavit, signed and dated October 28, 2022, as well as a book of documents, detailing these allegations.

### History Of Bad Faith Evictions

23. The Tenant and the Tenant's spouse, unit occupant Liseanne Sedran, both testified that in 2019 the tenant in the basement unit of the residential complex was evicted by the Landlords, through Board order TSL-95287-18, to use the unit for the Landlord's mother's residence. The Tenant and Ms. Sedran testified that they never once heard or saw the Landlord's mother, and that the same basement unit lights were on all the time. The Tenant and Ms. Sedran stated that it was their belief that the Landlord's mother never moved into the unit, and that the unit was vacant.

24. The Tenant submitted Board order TSL-23709-21, an L3 application by the Landlords to terminate another tenancy in the residential complex, as another example of a potentially bad faith eviction.

#### Son's Unit Requirement Is Not Genuine

25. The Tenant and his spouse testified that the Landlords' son does not need their specific unit, and could move into another unit owned by the Landlords. The Tenant testified that since the Landlords served him with the N12, there were several other units that the Landlords owned in the residential complex, and nearby, that became vacant and would have been suitable for the son's residence. The Tenant submitted copies of listings from Rentals.ca to highlight these vacancies. The Tenant contended that the son's requirements for the unit should not take precedence over his requirement and desire, as the Tenant, to remain in the unit.
26. The Tenant asserted that the Landlords are using their son's requirements in bad faith to evict him, and the Landlords will then re-rent the unit at a higher rent.

#### No Offer Of Other Units

27. Both the Tenant and his spouse testified that the Landlords never offered them another rental unit, even though several of the Landlords' rental units became available for occupancy after they served the Tenant the N12 on March 29, 2022. The Tenant submitted copies of listings from Rentals.ca of these vacancies. The Tenant contended that the Landlords' lack of offering alternate units to him, at significantly higher rental rates for a similar unit, demonstrates their desire to simply evict him, and therefore the bad faith of the Landlords' current application.

#### Eviction From Tenant's Enforcement Of Legal Rights

28. The Tenant testified that the Landlords attempted to evict him using an N5 notice in 2015, and another N5 notice in 2016, but he successfully defended his rights and was not evicted as a result of the two N5s. The Tenant testified further that he enforced his right to reasonably enjoy his rental unit without the noise of a barking dog, through his application TST-71433-16, and was awarded a rent abatement from the Board on August 2, 2016. The Tenant remarked that the Landlords' attempt to remove his unit parking spot in November 2019 was resolved only after he sought the assistance of his legal representative.
29. The Tenant asserted that that Landlords are using the N12 and their current L2 application to evict him, as a result of his vigorous enforcement of his legal rights in these three matters, rather than on the basis of their son's questionable requirement for his rental unit. The Tenant asserted further that the Landlords' application should be denied on these grounds pursuant to s. 83(3)(c) of the Act.

#### **Analysis**

30. On the basis of the evidence provided, I am satisfied that the Landlords' son genuinely intends to use the rental unit for his own personal residence for at least one year.

### History Of Bad Faith Evictions

31. On the basis of the evidence provided, I am not satisfied that the Landlords' previous N12 in 2019 for another tenancy, for the use of a basement unit, was served in bad faith, or that the Landlords' L3 application TSL-23709-21 for another tenancy was filed in bad faith.
32. For the previous N12 regarding another tenancy, I accept that the Tenant and his spouse did not see the Landlord's mother during her residence in the basement unit from September 2018 to March 2019; however, I find the Landlord's testimony more compelling that her mother resided in the unit for that period of time, and that this residence was only terminated after her mother broke her hip on March 10, 2019. I find that the Tenant and his spouse not seeing the Landlord's mother in the residential complex over this period, and the consistency of lights in the basement unit, is insufficient evidence for me to determine that the Landlord's mother did not reside in the unit over this time period.
33. With respect to the Landlords' L3 application TSL-23709-21, the Board order for this application, dated August 25, 2021, determined that the Landlord and the tenant signed an agreement to terminate the tenancy as of September 1, 2021. No evidence was provided by the Tenant that this agreement was not conducted in good faith between both parties.

### Son's Unit Requirement Is Not Genuine

34. As provided in paragraph 30 above, I am satisfied that the Landlords' son genuinely intends to use the rental unit for his own personal residence for at least one year. On the basis of the evidence provided, I find that the son's requirement for the unit is appropriate and reasonable despite other unit options that were available to the Landlords and their son after the N12 was served. However, I also acknowledge that the reasonableness of the son's requirement for the unit is not a determinant of the Landlord's good faith, as articulated in *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), and as provided in paragraph 12 above.
35. I find that the motives of the Landlords to provide their adult son with a rent-free unit of his choosing, and at the least expense for them given the subsequent loss of rent, are genuine and pursued in good faith. I also find that the motives of the son to live more independently from his parents, in a rental unit that meets his requirements, are genuine and pursued in good faith – as articulated in *Fava v. Harrison*, [2014] O.J. No. 2678 ONSC 3352 (Ont.Div.Ct.), and as provided in paragraph 13 above.
36. The Tenant provided no evidence that the Landlords intend to re-rent the unit, to a person other than their son, at a higher rent if the Tenant is evicted.

### No Offer Of Other Units

37. On the basis of the evidence provided, and as explained in paragraphs 8 through 10 above, I am satisfied that the Landlords met their obligation to pay the Tenant compensation equal to one month's rent in accordance with sections 48.1 and 55.1 of the Act, by providing a cheque payment to the Tenant of \$1320.54 on March 29, 2022 – before the date of termination of May 31, 2022. The Tenant accepted this payment as compensation. Accordingly, pursuant to s. 48.1 of the Act, the Landlords were not obligated to offer the Tenant another rental unit.

38. On the basis of the evidence provided, I am satisfied that the Landlords did not offer an alternate unit to the Tenant given the Tenant's acceptance of the one month's rent compensation, no expression of interest for an alternate unit from the Tenant, and only formal communication with the Tenant through the Tenant's legal representative after the N12 had been served. I am not satisfied that the Landlords' lack of offering an alternate unit to the Tenant represents bad faith with respect to the Landlords' current L2 application. I find that the Landlords' and son's motives for their use of the unit are genuine and pursued in good faith as explained in paragraph 35 above.

#### Eviction From Tenant's Enforcement Of Legal Rights

39. On the basis of the evidence provided, I am satisfied that the Landlords are not seeking to evict the Tenant for the reason that the Tenant has enforced his legal rights.
40. I am satisfied that the Landlords served the Tenant N5 notifications in 2015 and in 2016 as a result of noise complaints from another tenant, and that the resulting L2 application TSL-70648-16 was dismissed by the Board on June 1, 2016 as a result of insufficient details in the Landlords' notice. I accept that the Landlord had a right to serve these notices pursuant to s. 64(1) of the Act.
41. I am satisfied that the Tenant enforced his right to reasonably enjoy his rental unit without the noise of a barking dog, though his application TST-71433-16, and was awarded a rent abatement from the Board on August 2, 2016. I am also satisfied that when confronted by the Landlords in November 2019 to surrender his parking spot to assist with snow removal in the residential complex parking lot, the Tenant resisted the Landlords' request, and the Landlords then relented.
42. I accept that the Landlords' L2-N5 application in 2016 as a result of noise, the Tenant's T2 application in 2016 also regarding noise, and the parties resolution of a parking spot issue in 2019, all heightened tensions in the tenancy relationship; however, I am not satisfied that three years later, these events prompted the Landlords to serve an N12 to the Tenant in bad faith.
43. The Tenant has the burden of proving his s. 83(3)(c) claim on a balance of probabilities. I find that regarding the three tenancy issues detailed in paragraphs 40, 41 and 42 above, the Tenant has not established that the Landlords filed their L2-N12 application as a result of the Tenant's response to these tenancy issues. Without sufficient evidence before me, I am unable to determine, on a balance of probabilities, that the Landlords filed their application in response to the Tenant enforcing his legal rights. Accordingly, the Tenant's request that the Board refuse to grant the Landlords' application, pursuant to s. 83(3)(c) of the Act, is denied.

#### Pattern Of Activities Relating to Bad Faith

44. In addition to considering the Tenant's individual allegations of the Landlords' bad faith, as listed in paragraph 21 above, and analysed separately in paragraphs 30 through 43, I also considered the pattern of activities of the Landlords with respect to this tenancy and others within the residential complex, pursuant to s. 202(1) of the Act.

45. On the basis of the evidence provided, I am not satisfied that the Landlords have a history of evicting tenants from their units in bad faith to raise the rent with new tenants. I accept that the Landlords own similar units with higher rents as a result of tenancies established at different times under differing market conditions. The Tenant has not established through sufficient evidence that these higher rental rates are the result of a series of bad faith evictions from the Landlords, and therefore, that a pattern of bad faith exists. Nor has the Tenant established a pattern of Landlord conduct with respect to this tenancy, or any other tenancy in the residential complex, that represents bad faith. Under these circumstances, I am unable to conclude that it is more likely than not that the Landlords' activities represent a pattern of bad faith.

### **Summary – Good Faith**

46. On the basis of the evidence provided, I find that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for their son, Matthew Stolarczyk, for a period of at least one year.

### **Relief From Eviction**

47. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until May 31, 2023 pursuant to subsection 83(1)(b) of the Act.

48. The Tenant's spouse, occupant Liseanne Sedan, testified that the possibility of an eviction has worsened her severe anxiety disorder. She noted that currently, her income is their only household income, and they are not able to afford the alternate rental units that they have looked at. She remarked that she wants to stay in the rental unit that she has lived in for 10 years, and to remain in her neighbourhood in peace.

49. The Tenant testified that he is a small business owner, and that his business is currently struggling as a result of COVID and its lingering effects. As a result, the Tenant stated, he has had to incur significant debt to sustain his business and pay for personal expenses. He noted that despite these difficulties, he has continued to pay his rent in full and on time, but the financial strain has worsened his bouts of anxiety. He added that in May 2022 he underwent ear surgery to correct a 90% hearing loss caused by a severe ear infection.

50. The Tenant testified further that his business is 3 km from the unit, and therefore the unit's location is ideal because he does not drive. He remarked that he loves the neighbourhood, the neighbours, and the bike lanes that are close by. The Tenant asserted that if evicted, he would not be able to afford to live in another unit similar to the current unit, he would lose his business and livelihood, and that his health would severely deteriorate.

51. I find that, although the Landlords in good faith require possession of their rental unit for the residential occupation of their son, postponing the Tenant's eviction until May 31, 2023 will provide the Tenant and his spouse, who are struggling with significant health and financial issues, with more time and less stress to secure a rental unit that is suitable for both of them. I find that delaying the Tenant's eviction beyond May 31, 2023 would be unfair to the Landlords who seek to accommodate their son as soon as possible.



52. I am satisfied that the eviction postponement to May 31, 2023 would not be financially unfair to the Landlord, given that the Tenant continues to pay his rent, has no arrears, and the Landlords' son would not be paying rent. Although the Landlords' son's current residence at home is not ideal, I am satisfied that the son's move to the rental unit is not, as of the day of this hearing, immediately time critical. I therefore find that the son's delayed move to the rental unit would not be unfair to the Landlord, while providing significant relief to the Tenant.

**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 May 31, 2023.
2. As of the date of this order, the amount the Landlords are holding for rent paid from November 4, 2022 to November 30, 2022, the rent deposit, and the interest owing on the deposit exceeds the amount the Tenant owes for compensation by \$2,524.15. This amount owing represents \$1,190.28 in rent, \$1,320.54 for the rent deposit, and \$13.33 for the rent deposit interest.
3. The Landlords are authorized to offset from the amount of \$2,524.15 the Landlords owe the Tenant, the following amount: \$43.42 per day for compensation for the use of the unit from November 4, 2022 to the date the Tenant moves out of the unit.
4. The Landlords or the Tenant may collect from the other any money that becomes owing as a result of this order.
5. If the Tenant or the Landlords do not pay the other the full amount owing on or before May 31, 2023, the Tenant or the Landlords will start to owe interest. This will be simple interest calculated from June 1, 2023 at 4.00% annually on the balance outstanding.
6. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 June 1, 2023

**November 24, 2022**

**Date Issued**

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Frank Ebner

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 December 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.