



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

**Citation:** Balasingam v Salem, 2022 ONLTB 12567

**Date:** 2022-11-16

**File Number:** LTB-L-002936-21

**In the matter of:** 287 (upper Level), 1605 ALBION RD  
ETOBICOKE ON M9V1B6

**Between:** Jeyyathas Balasingam Landlord

**And**

Anna Salem, Samer Salem Tenants

Jeyyathas Balasingam (the 'Landlord') applied for an order to terminate the tenancy and evict Anna Salem, Samer Salem (the 'Tenants') 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 June 29, 2022.

The Landlord, the Landlord's Legal Representative, T. Patchamuttu and the Tenant, S. Salem attended the hearing.

M.Salem attended as a support for the Tenant.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated as of December 31, 2022
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On November 29, 2021, the Landlord gave the Tenants an N12 notice of termination with the termination date of January 31, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has compensated the Tenants an amount equal to one month's rent by January 31, 2022 and has therefore complied with section 48.1 of the Act.
5. The Landlord collected a rent deposit of \$1,300.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$237.81 is owing to the Tenants for the period from September 1, 2011 to June 29, 2022.

6. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

### Good Faith

7. The N12 Notice was served pursuant to section 48 of 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, [emphasis added]  
(a) the landlord

8. 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."
9. 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."
10. The Landlord is currently residing in a home with numerous other family members. He testified that his sister's husband left her, and her family is residing in his current home, and he sleeps in the living room on a couch. The Landlord testified that he requires dialysis treatment 3 days a week for 4 hours. He takes a specialized transit services to get there and back and he has to book his rides there and often has to wait after his treatment for some time for the bus to come and pick him up. He testified that it is especially bothersome to wait after his treatment is done because he often feels unwell. He testified that he requires a place with his own space in order to start receiving dialysis treatment from home. He testified that he is awaiting a kidney transplant and that could take many years. He testified that people at his current residence work outside the home and he is fearful of infection.
11. The Tenant testified that the Landlord has previously been before the Board on an application based on a previous N12 for the same reasons the Landlord is stating at this hearing. That application was dismissed pursuant to subsection 83(3) of the Act as the Board found that the Landlord tried to increase the Tenant's rent illegally and that was the motivation for serving the N12.
12. That order (TNL-32426-21) was issued on November 8, 2021 and the application was based on an N12 Notice with a termination date of June 30, 2021.
13. Section 202 (1) of the Act says that in making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants.

14. I do not find that, in this case, the Landlord's motivation for serving the N12 notice before me was for the Tenant's noncompliance with an illegal rent increase sought by the Landlord in 2020. The application before me is a new application and my determinations must be based on the facts and evidence presented at this hearing.
15. I accept the Landlord's testimony regarding his need for his own space in order to receive at home dialysis treatment and his concerns about infection due to how crowded it is in his current situation. I also am satisfied, based on the Landlord's testimony that he has a genuine intention to occupy and that his intention to occupy the rental unit is reasonable. The Landlord confirmed at the hearing that he intends to live there indefinitely, but for at least a period of one year.
16. I do not find that issue estoppel applies here. Essentially, the principle of issue estoppel prevents a litigant from raising an issue that has already been decided in a previous proceeding. Although the Landlord was here before on an L2 application based on an N12, and that application was dismissed, that decision was based on the conclusion that the Landlord served the N12 because the Tenants did not pay an illegal increase in 2020. I do not find that to be the case in this application.

#### Relief from Eviction

17. The Tenant testified that he lives in the unit with his wife and three children, ages 13, 17 and 21. He testified that his son has special needs, and his son attends a school with programming to accommodate him. He testified that if they have to move out of the area, his son would not be able to attend the school. He testified that he cannot find a three-bedroom unit that is affordable to him. The Tenant testified that if they are to be evicted, he would need 2 years to find suitable housing. The Tenants have lived in the unit for 11 years.
18. The Landlord's legal representative submits that the Landlord is on the waitlist for a kidney transplant. In order to be able to do dialysis at home, he requires his own space. The landlord is seeking an order to terminate the tenancy with a termination date of September 30, 2022.
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 December 31, 2022 pursuant to subsection 83(1)(b) of the Act. This is a long-standing tenancy. I am mindful of the Tenant's testimony regarding his son, and the special needs programming he receives at the school he is currently attending. I am also mindful of the Landlord's medical condition and his need for his own space in order to receive at home treatment. I find that delaying the termination date is fair in these circumstances to balance the prejudice suffered by each of the parties.

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

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 31, 2022.

2. If the unit is not vacated on or before December 31, 2022, then starting January 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 January 1, 2023.

**November 16, 2022**  
**Issued**

**Date**  
**Emily Robb** \_\_\_\_\_  
Member, Landlord and Tenants 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 Tenants expires on May 28, 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.