



## Order under Section 21.2 of the Statutory Powers Procedure Act and the Residential Tenancies Act, 2006

**Citation:** Gallagher v Cloutier, 2022 ONLTB 10112

**Date:** 2022-11-09

**File Number:** LTB-L-004736-22-RV

**In the matter of:** 1, 53 Hall St. north  
Blenheim ON N0P1A0

**Between:** Brian Gallagher Landlord

**And**

Chris Cloutier Tenant

Brian Gallagher (the 'Landlord') applied for an order to terminate the tenancy and evict Chris Cloutier (the 'Tenant') 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 resolved by order LTB-L-004736-22 issued on August 17, 2022.

On September 6, 2022, the Landlord requested a review of the order.

On September 9, 2022, interim order LTB-L-004736-22 was issued.

This request to review was heard by videoconference on October 19, 2022. The Landlord, the Landlord's legal representative, K. Cronk, and the Tenant, attended the hearing.

### Determinations:

1. The Landlord's application with respect to this matter was heard on August 11, 2022. The Landlord and the Tenant attended the hearing. An order was issued on August 17, 2022.
2. The Landlord requested a review of the order. At the review hearing, the issues to be decided were:
  - (i) whether the Member failed to consider the legal test for "good faith" as set out by the Ontario Divisional Court.
  - (ii) whether the Member unreasonably exercised her discretion pursuant to section 83 of the *Residential Tenancies Act, 2006* (the 'Act')

### Member Applied Proper Test

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3. The Landlord says the hearing member committed a serious error by failing to apply the legal test for “good faith” on applications for eviction based on a landlord’s own use which is set out by the Divisional Court in *Feeny v. Noble*<sup>1</sup> and *Salter v. Beljinac*.<sup>2</sup>
4. As the Divisional Court found in *Feeny*, good faith means a genuine intent to occupy a unit and not the reasonableness of the Landlord’s proposal. As per *Salter*, the fact that a landlord may choose the particular unit to occupy does not result in failing to meet the good faith requirement.
5. The Landlord submitted that the Member relied on the Landlord’s multiple alternative places to live in determining whether he met the good faith requirement, contrary to *Feeny* and *Salter*. Specifically, in paragraph 7 of the Member’s order, she states:

Based on all the evidence, the Landlord has not proven that they in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year. The Landlord has multiple alternative places to live but states that he desires the rental unit because of mobility issues. The Tenant strenuously denied the Landlord has mobility issues and in the absence of any evidence to substantiate the Landlord’s claims, I am not satisfied that the notice of termination was given in good faith.

6. I find that the Board Member did not make a serious error as her application of the law was reasonable. In my view, the Member considered the Landlord’s genuine intent to occupy the unit and her decision to find that the notice of termination was not given in good faith was based on the evidence regarding the Landlord’s mobility issues.
7. At the review hearing, the Landlord was asked if he advised the Board that he wanted to reside in the unit because of his mobility issues, as described by the Member in paragraph 7. The Landlord stated that he did.
8. While the Landlord’s alternative places to live was mentioned in paragraph 7, I do not find that the Member’s determination was solely based on this finding of fact. The order sets out in sufficient detail the reasons why the Member arrived at her conclusions. The order, for example, identifies the parties’ evidence and legal arguments with respect to the Landlord’s mobility issues. The order is therefore an adequate order, and it is evident that the Member’s findings of fact are rationally connected to the evidence adduced during the hearing.
9. Based on the above, I find that the Member did not make a serious error.

#### Member’s Discretion Pursuant to Section 83 was Reasonable

10. The Landlord submitted that the Member’s discretion under section 83 of the Act does not mention the disclosed circumstances of the Landlord, other than that the Landlord has other choices of accommodation.

<sup>1</sup> [1994] 19, O.R. (3d) (Div. Ct.) [*Feeny*].

<sup>2</sup> 2001 CanLII 30231 (ONSC DC) [*Salter*].

11. Paragraph 8 of the Order states as follows:

Section 83 of the Residential Tenancies Act, 2006 ('the Act') requires me to balance the interests of both parties in deciding whether or not to terminate the tenancy and evict the Tenant. Had I found that the notice was given in good faith, I would have denied the Landlord's application nevertheless because the Tenant, on limited income, does not have as numerous a choice for accommodation as the Landlord does [emphasis added].

12. Section 83 of the Act states that in an application for an order for eviction, the Board may refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to do so or order postponing enforcement of eviction. In other words, relief from eviction is only considered if the Landlord's application for eviction is successful. In this case, the Member had determined that the Landlord's application was not successful. In the paragraph above, the Member made it clear that her considerations under section 83 were *if* she had found the notice was given in good faith. As such, the Member was not required to identify all of the Landlord's circumstances in her order. There is no error in law where a member does not provide fulsome reasons for determinations made in the alternative.

13. This order contains all of the reasons within it. No further reasons shall be issued.

**It is ordered that:**

1. The request to review order LTB-L-004736-22 issued on August 17, 2022 is denied. The order is confirmed and remains unchanged.
2. The interim order issued on September 9, 2022 is cancelled.

**November 9, 2022**  
**Date Issued**

Camille Tancioco  
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor,  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.