



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

**Citation:** Esene v Giesler, 2022 ONLTB 10105

**Date:** 2022-11-09

**File Number:** LTB-L-015206-22

**In the matter of:** 121 STEEPLECHASE WAY  
WATERLOO ON N2K0E7

**Between:** Clement Esene Landlords  
Olaniyi Olanrewaju

**And**

Jeff Giesler Tenant

Clement Esene and Olaniyi Olanrewaju (the 'Landlords') applied for an order to terminate the tenancy and evict Jeff Giesler (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 October 17, 2022. The Landlords and the Landlords' representative, James Roussy, attended the hearing. The Tenant also attended the hearing.

**Determinations:**

1. On March 9, 2022 the Landlords served the Tenant with an N12 with a termination date of May 9, 2022. The rent is paid on the 10th day of each month. The N12 seeks termination of the tenancy on the ground that the Landlords require the rental unit for their own residential occupation.
2. The Landlords applied to the Board to terminate this tenancy on March 16, 2022. The Landlords testified that they have not, within two years prior to filing this application, given another notice under section 48, 49 or 50 of the Act in respect to the same or a different rental unit.
3. The Landlords testified further that this is a month-to-month tenancy with a monthly rent of \$2400.00 paid on the 10th of each month, and that the Tenant remains in possession of the rental unit and has no rent arrears as of the date of this hearing. The Landlords confirmed that they collected a rent deposit of \$2400.00 from the Tenant on June 10, 2018, and have not paid the Tenant any interest on this deposit.

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## Compensation

4. Section 48.1 of the *Residential Tenancies Act, 2006* (the ‘Act’) requires a landlord to compensate a tenant in an amount equal to one month’s rent 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.
5. Landlord Clement Esene testified that he paid the Tenant one month’s rent compensation of \$2400.00 through a Scotiabank e-transfer to the Tenant’s bank account on April 25, 2022 – 14 days before the May 9, 2022 termination date.
6. The Tenant testified that he received and accepted the \$2400.00 e-transfer payment from the Landlords.
7. 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 an e-transfer payment to the Tenant of \$2400.00 on April 25, 2022 – before the date of termination of May 9, 2022.

## Good Faith

8. The N12 was served pursuant to section 48 of the Act. Section 48(1) requires that, in order to be successful in this application, the Landlords must establish that at the time of the service of the N12 the Landlords required, in good faith, the unit for residential use.
9. 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.
10. 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

11. Landlord Clement Esene testified that he in good faith requires the rental unit for his own personal residence for a period of not less than one year. Pursuant to s. 72(1)(a) of the Act, the Landlord filed a signed declaration with the Board, dated March 15, 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.

12. Landlord Clement Esene testified further that he currently resides with his spouse, but he and his spouse are separated, so remaining in the same residence is difficult and is causing further friction. The Landlord stated that he needs his own residence. The Landlord noted that he works from home most of the time, and travels to his office in Woodbridge, Ontario from his current residence in Brampton, three or four times per month.

### **Tenant's Evidence**

13. The Tenant testified that he believes the Landlords' application to evict him is not being made in good faith. The Tenant explained that the Landlord currently lives in Brampton – a short drive to the Landlord's office in Woodbridge. The Tenant noted that the rental unit is in Waterloo, Ontario, and if the Landlord moved into the unit, he would then have a two-hour commute to travel to his office in Woodbridge. The Tenant questioned the motives of the Landlord for moving to Waterloo.

### **Analysis**

14. On the basis of the evidence provided, I am satisfied that Landlord Clement Esene genuinely intends to use the rental unit for his own personal residence for at least one year. I accept that the Landlord's move to Waterloo will increase his commute time to his office three or four times per month; however, I am satisfied that his genuine desire for a residence separate from his estranged spouse is compelling the Landlord to move into the rental unit – despite the infrequent additional commuting time from Waterloo. For these reasons, I therefore find that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for a period of at least one year.

### **Relief from Eviction**

15. 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 January 15, 2023 pursuant to subsection 83(1)(b) of the Act.
16. The Tenant testified that he and his wife both suffer from health issues. The Tenant remarked that he was diagnosed with testicular cancer in December 2021 and is currently undergoing treatment. The Tenant stated that he also suffers from pancreatitis. The Tenant noted further that both he and his wife are on disability, in his case, for knee injuries, and for his wife as a result of mental illness. The Tenant asserted that an eviction would be detrimental to their health.
17. The Tenant testified further that his son is in grade 12, and that a termination of the tenancy would disrupt his son's education if a move also required a change of schools. The Tenant asserted that he wanted to retain his tenancy, and that without available alternate accommodations, his family would be homeless if evicted.
18. I find that, although the Landlords in good faith require possession of their rental unit for their residential occupation, postponing the Tenant's eviction until January 15, 2023 will provide the Tenant and his family, who are struggling with multiple health issues, with more time to secure an alternate rental unit with the least amount of family disruption. I

find that the short delay for the Landlords in taking possession of the rental unit, as a result of this eviction postponement, would not be unduly unfair to the Landlords.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated on January 15, 2023. The Tenant must move out of the rental unit on or before January 15, 2023.
2. The Tenant shall continue to pay the Landlords monthly rent of \$2400.00 until the Tenant vacates the rental unit.
3. 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.
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 16, 2023.

**November 9, 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 July 16, 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.