



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

Citation: Feenstra v Bond, 2022 ONLTB 9785

Date: 2022-11-03

File Number: LTB-L-011759-22

In the matter of: 1963 PATTERSON DRIVE
KERWOOD ON N0M2B0

Between: Jeffrey Patterson Landlords

And

Ryan Bond Tenant

Jacob John Feenstra (the 'previous Landlord') applied for an order to terminate the tenancy and evict Ryan Bond (the 'Tenant') because the previous Landlord had entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

Since filing the application the sale of the rental property closed to Jeffrey Patterson (the 'Landlord') and he has become the Landlord. As such, Jacob John Feenstra has been removed from this application and Jeffrey Patterson has been added.

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 19, 2022.

The Landlord, the Landlord's Representative David Allen Price and the Tenant attended the hearing.

Determinations:

1. On April 10, 2022, the Landlord gave the Tenant an N12 notice of termination with the termination date of June 30, 2022. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of residential occupation by their son Ryan Patterson.
2. The Landlord's application is dismissed because the proposed occupation of the rental unit does not meet the definition of residential occupation required by the *Residential Tenancies Act* ('the Act').

Residential Occupation

3. The Patterson's are farmers who own a large amount of farmland in the area. The rental property has farmland on it that the Patterson's already farm based upon an agreement

with the previous owner. The Landlord testified that he purchased the property because he wants to add it to his farming operation and because it has a residence on it that he wants to give to his son.

4. The Landlord's evidence is that his son Ryan Patterson ('R.P') requires the rental unit in good faith for the purpose of residential occupation. R.P did not testify at the hearing, but his written declaration was entered as an exhibit.
5. The Landlord testified that his son attends McMaster University in Hamilton and is currently in his third year of a four-year degree. While at school R.P has a residence in Hamilton. The rental property is approximately 2 hours away from Hamilton. According to the Landlord, R.P's plan is maintain his residence in Hamilton and to live in the rental property on weekends and during the summer school break. The Landlord noted that R.P's primary address for his government documentation, OHIP etc, will be changed to the rental property.
6. Section 49 of the Act says in part that a landlord who has entered into an agreement of purchase and sale of the residential complex may, on behalf of the purchaser, give the tenant of a unit in the residential complex a notice terminating the tenancy, if the purchaser in good faith requires possession of the residential complex or the unit for the purpose of residential occupation.
7. The Landlord must establish that the unit will be used for residential occupation as required by the Act. The Ontario Divisional Court in the case of *MacDonald v. Richard [2008] O.J. 6076* (Ont. Div. Ct.) ("MacDonald"), ruled that temporary full-time occupancy of a residential unit does not constitute "residential occupation" as contemplated by the Act.
8. This Board in a directly on point case *TSL-80318-16 (Re), 2017 CanLII 14304 (ON LTB)* determined that an intended occupant who was a full-time university student who intended to use a rental unit on weekends and for full-time occupancy in the summers was not residential occupation as required by the Act. The Divisional Court upheld that decision (*Kohen v. Warner, 2018 ONSC 3865*).
9. The caselaw surrounding residential occupation largely involves cases involving a landlord's own personal use, not a purchaser's own use. However, I see no reason that the words "residential occupation" should be interpreted differently depending on whether or not the user is a landlord or a purchaser.
10. I find that R.P's use of the rental unit cannot be classified as residential occupation as required by the Act. This is because R.P would be spending the majority of his time during the school year in Hamilton. I have also considered that the rental property is 2 hours way from where R.P goes to school and that commuting during the week would not be possible.
11. I am not persuaded by the Landlord's argument that because R.P will change his official government identification to match the rental unit that means that he will be living there. The test is not where an individual purports to the government of Ontario that they live, the test is whether the R.P will be occupying the rental unit for residential occupation, not infrequent or occasional occupation.
12. The Landlord's application is dismissed because the proposed occupation would not be residential occupation as required under the Act.

13. The Landlord has compensated the Tenant \$850.00 for serving the N12 Notice. The Tenant testified that he did receive money from the Landlord, but that money was his last month's rent deposit being returned to him, not compensation. The Landlord submitted into evidence a signed acknowledgement by the Tenant that he received compensation and I find that document to be determinative on the issue. The Tenant admits to signing that document but did not realize it was for compensation for the N12 Notice being served upon him. In accordance with section 73.1 of the Act the Tenant is required to pay back the compensation they received.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant will repay the \$850.00 compensation that they received from the Landlord.
3. If the Tenant does not pay the Landlord the full amount owing on or before November 14, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 15, 2022 at 4.00% annually on the balance outstanding.

November 3, 2022

Date Issued

Amanda Kovats
Member, Landlord and Tenant Board

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