



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

**Citation:** Omar v Cummer, 2022 ONLTB 10104

**Date:** 2022-10-31

**File Number:** LTB-L-009621-22

**In the matter of:** Upper unit, 88 HEWITT CRES  
Ajax ON L1S7B4

**Between:** Ali Omar Landlord

**And**

Adam Cummer, Michelle Johnson Tenant

Ali Omar (the 'Landlord') applied for an order to terminate the tenancy and evict Adam Cummer, Michelle Johnson (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 heard by videoconference on September 8, 2022 .

The Landlord and the Landlord’s representative Jordan Nieuwhof and the Tenants attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On February 17, 2022, the Landlord gave the Tenant an N12 notice of termination deemed served on February 18, 2022 with the termination date of April 30, 2022. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by his daughter.
4. The Landlord has compensated the Tenant an amount equal to one month's rent by April 30, 2022.
5. The Landlord collected a rent deposit of \$1,500.00 from the Tenant and this deposit is still being held by the Landlord. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit and interest owing on the rent deposit shall be applied to the rent for the last month of the tenancy.

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**Good faith**

6. I find that the Landlord in good faith requires possession of the rental unit for the purpose of their daughter's residential occupation for a period of at least one year. I accept that his daughter has a genuine intention to occupy the rental unit.
7. The Landlord testified that he requires the rental unit for his daughter to live in. Currently, his daughter resides in their family home which has five occupants and this residence does not provide enough space for all of the occupants.
8. The Landlord's daughter Alana testified that she would like to move into the rental unit with her Aunt who will be staying with her temporarily. As well, she would like to live with her partner and start a family and this would be a more affordable accommodation for her. The Landlord testified that prior to his daughter moving in improvements or renovations will be done to the rental unit.
9. The Tenant believes the N12 notice is given in bad faith and testified that because there have been several disputes between the Landlord and the Tenants' the Landlord is serving the notice as a means to end the Tenancy and rent or sell the rental unit. However, the Tenant has not provided any evidence to support this allegation.
10. I accept the testimony of the Landlord and his daughter that they in good faith require the personal use of the rental unit. However, they have not demonstrated that they require immediate possession of the rental unit and that delaying the eviction will prejudice the Landlord.

**Relief from eviction**

11. 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 January 31, 2022 pursuant to subsection 83(1)(b) of the Act.
12. The Tenants have lived in the rental unit for 23 years.
13. The Tenant testified that due to their financial and family circumstances it will be difficult to find another rental unit. The Tenants are parents of a child with a disability. Their son has autism and this disability requires special needs supports. The Tenants have such supports in place in the community and school where they reside.
14. The Tenant Michelle Johnson suffers from a serious heart condition. She has had heart surgery in the past five years and requires another surgery in the near future. She also is diabetic and insulin dependent. As a result of her medical conditions and her son's needs the Tenant Adam Cummer is the sole supporter of their family.
15. They have asked that the eviction be delayed in order to have additional time to seek affordable accommodation in the same community where they can maintain their child's support needs or find alternate living arrangements where these supports could be put in place. Their son has attended the same school since 2012 and due to his disability they are concerned about transitioning him to a new school.
16. While the Landlord's representative indicated that if the eviction was delayed it would cause prejudice, the Landlord has not demonstrated an urgent need for immediate

possession of the rental and testified that prior to his daughter moving into the rental unit that their will be upgrades or renovations done to the rental. Therefore, the Landlord has not proven prejudice if the eviction is delayed accommodating the disability needs of the Tenants.

17. Therefore, the eviction is delayed until January 31, 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 31, 2023.
2. If the unit is not vacated on or before January 31, 2023, then starting February 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 February 1, 2023.
4. If the Tenants do not vacate the rental unit by January 31, 2023 the Tenants shall pay to the Landlord \$55.60 per day for compensation for the use of the unit starting February 1, 2023 to the date the Tenant moves out of the unit.

**November 7, 2022**  
**Date Issued**

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Maria Shaw  
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.