



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

**Citation:** Tariq v Jurcich, 2022 ONLTB 10005

**Date:** 2022-10-31

**File Number:** LTB-L-016381-22

**In the matter of:** Lower, 711 Wesley Dr  
Oshawa ON L1H7X6

**Between:** Muhammad Jahanzeb Tariq Landlord

**and**

Amber Lynne Jurcich Tenant

Muhammad Jahanzeb Tariq (the 'Landlord') applied for an order to terminate the tenancy and evict Amber Lynne Jurcich (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.

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 attended the hearing and was represented by Carrie Aylwin. The Tenant attended the hearing and was self-represented. Prior to the hearing the Tenant met with Tenant Duty Counsel.

**Determinations:**

1. This application involves a residential complex that is a detached house which is divided into two rental units. The Tenant occupies one of the units.
2. The Landlord requests an order terminating the tenancy so that the Landlord can occupy the unit for personal use.
3. For reasons that follow, the application is granted. The Tenant is to vacate the unit on or before May 1, 2023.

**PRELIMINARY MATTERS**

4. The Tenant raised one preliminary issue.
5. A request was made to adjourn the hearing so that she could obtain legal representation. This request was denied.

6. The Tenant stated that since the application was filed she had been in contact with a local legal clinic, and a solicitor, who was assisting her prior to the date the hearing was scheduled but had yet to formally retain that legal representative. However, having received the Notice of Hearing a few weeks earlier, she was unable to retain a legal representative due to that person's unavailability and feels that she needs a representative due to her lack of knowledge of the law and her rights, and that she lives with anxiety, all of which would make the hearing, as a self-represented individual, challenging. The Tenant confirmed that she had an opportunity to speak with Tenant Duty Counsel prior to the hearing.
7. The Landlord's legal representative opposed the adjournment request stating that the Tenant had an adequate opportunity to seek legal assistance and that any further delays would be prejudicial to the Landlord.
8. The Board's non-binding Interpretation Guideline 1 states the following regarding requests to adjourn for the purpose of obtaining legal representation:

Section 10 of the *Statutory Powers Procedure Act* states that a party may be represented by a representative at a hearing. However, the right to representation is not absolute and an adjournment is not automatically granted when it is requested on this ground. The onus is on the party wishing to be represented to make all reasonable efforts to find a lawyer or paralegal able to represent them at the hearing once they become aware of the hearing date.

A short adjournment may be allowed where a representative has been retained but is unavailable on the date set for the hearing, or where the party can demonstrate that they have made reasonable efforts to retain a lawyer or paralegal before the hearing but have not yet been able to do so.

9. Section 183 of the *Residential Tenancies Act, 2006*, (the 'Act') requires the Board to adopt the most expeditious method of determining the questions arising in a proceeding that affords to all persons directly affected by the proceeding an adequate opportunity to know the issues and be heard on the matter. I am not satisfied that the Tenant made reasonable efforts to secure representation for the hearing. Moreover, given that the Landlord filed their application almost 7 months ago, in my view, delaying the hearing any further would be unduly prejudicial to the Landlord. For these reasons the request was denied.

## THE L2 APPLICATION

10. The following facts are not in dispute:
  - a. The residential complex consists of a detached house. The Tenant resides in the lower basement unit.
  - b. An N12 notice of termination was delivered to the Tenant by the Landlord on February 28, 2022 informing them that the Landlord and the Landlord's spouse intends to move into the rental unit and occupy it for at least one year.
  - c. The date of termination identified on the N12 was April 30, 2022.

- d. The monthly rent is \$1,200.00.
- e. The Landlord paid the Tenant \$1,200.00 compensation by e-transfer on April 13, 2022.
- f. The Tenant has yet to vacate the rental unit.

### Good faith

11. The evidence supports a finding that the Landlord intends in good faith to occupy the unit for residential purposes for at least one year.
12. Subsection 48(1)(a) and (b) of the Act provides that a landlord may terminate a tenancy by first providing notice to the tenant informing them that the landlord or the landlord's spouse in good faith requires possession of the unit for residential occupation for a period of at least one year.
13. The test of good faith is outlined in a series of judicial decisions. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is a 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 means that the Landlord sincerely intends to occupy the rental unit. Although the Landlord may have other motives for selecting a particular rental unit, these would not affect the good faith of the Landlord's notice.
14. In *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court added that while the motives of the Landlord are "largely irrelevant", as determined in *Salter*, the Board may consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith, to occupy the residential unit.

### Landlord's evidence

15. The Landlord testified that in and around December 2020 he purchased the property with the intention of renting it out. In November 2021 however he decided to renovate and sell the property, and thus he subsequently issued an N8 notice of termination in error before deciding against pursuing the N8 notice because he, first, did not obtain legal advice on how to achieve these goals and, second, due to a change in the real estate market he decided not to sell the unit but instead, to move into it. Elaborating further, he stated that as he had a significant personal debt after purchasing the unit, his intention was to sell the house, but later decided to keep it and move into it instead. Entered into evidence in support of the Landlord's testimony was a copy of an N8 notice of termination dated November 11, 2021 which did not identify any of the 5 'Reasons' but, had written into the 'Details About the Reasons for this Notice' section, the following: "I am selling the house and I need the house vacant for repairs and renovations". After consulting with a legal representative the Landlord learned that this was the wrong form to use to achieve his goals at that time.
16. The Landlord testified that he and his wife intend to move into the rental unit and occupy it for at least one year. He described the residential complex as a raised bungalow which

consists of two units - an upstairs unit, and the lower unit the Tenant occupies. The upstairs unit is currently tenanted as of the date of the hearing however, he entered into an agreement for the upstairs tenant to vacate, which would enable him and his spouse to move into and occupy the entire residence for their personal use once the Tenant vacates the lower unit.

17. The Landlord confirmed that he did issue another N12 to the tenants occupying the upper unit of the residential complex, in addition to the Tenant. He also testified that he provided the Tenant with one month compensation on April 13<sup>th</sup>, 2022, by e-transfer, valued at \$1,200.00. The date of termination on the N12 was April 30, 2022. Entered into evidence by the Landlord in support of his testimony was a copy of the N12 notice dated February 28, 2022, a Certificate of Service dated March 3, 2022 confirming service of the N12 on February 28, 2022, and a screen shot of an e-transfer receipt of \$1,200.00 made on April 13, 2022 which was accepted by the Tenant.
18. In response to questions posed by the Board about his current living arrangements and the length of time needed to occupy the unit if the Tenant vacates, the Landlord stated that he currently lives in a shared house with his spouse, their 3-year old daughter, and in-laws. Due to the large number of people in that residence, they are interested in moving into the unit so that they can raise their daughter in a less crowded house. He would require 1-2 months to move into the unit as it would take him some time to move his belongings and, he also needs to wait for the upper unit tenants to vacate.

#### Tenant's evidence

19. The Tenant testified that, in her view, the Landlord issued the N12 notice of termination in an attempt to avoid performing long-standing maintenance issues she raised for several months, issues which she followed-up with the Landlord about (and the Landlord's wife and real estate agent) on a regular basis. She asserts that the true purpose for the application is to evict her so that the unit can be sold and not for the Landlord and his spouse to occupy for personal use. Elaborating further, the Tenant indicated that the outstanding maintenance issues, raised as early as November 2021, included the following: (i) the closet door does not slide; (ii) the handle on the bathroom closet door is defective; (iii) flooring is 'bubbling' with cracks, gaps and exposed nails; (iv) the walls are 'bubbling' with cracks; (v) mold growth in different places in the unit; and, (vi) issues with the bathroom closet ceiling.
20. The Tenant testified that she had followed up regularly with the Landlord regarding these maintenance issues and, at one time, agreed to temporarily vacate the premises to an Airbnb so as to facilitate the repairs and allow the Landlord to stage the unit for sale. The repairs were never completed and the maintenance issues persist through to the date of the hearing.
21. The Tenant also testified that in late February 2022 to early March 2022, she was issued an N12 notice 5 days after inquiring on the status of the repairs.

22. Collectively, and considering the timeline of her maintenance-related complaints and the Landlord's reluctance to address them, the Tenant is of the view that the N12 had not been issued in good faith but is being used to avoid the expense of maintaining the unit.
23. In response to questions posed to the Landlord by the Board about the maintenance issues raised by the Tenant, the Landlord acknowledged that there are few maintenance issues to be addressed, however, he did not agree on the extent of the maintenance repairs claimed by the Tenant that need to be done. He stated, without providing details, how he investigated the complaints, made attempts to have the repairs completed by a contractor, but was impeded by the Tenant's lack of cooperation. The Tenant denied impeding any contractor from attending the unit to perform the repairs, stating that she herself contacted one of the contractors about the status of the repairs from which she learned that a quote was provided for the work but that the Landlord failed to follow-up with them to complete the service.
24. Entered into evidence by the Tenant in support of her testimony were 15 screenshots of text message communications beginning in and around November 2021 through to around May 2022 (some of which included photographs showing mold in certain areas of the unit) between the Landlord and their realtor about the maintenance issues and repairs, and her attempts to follow up with these issues.
25. The Tenant also stated that she is currently preparing to issue a T6 application to address these maintenance issues.

### Analysis

26. I find that, based on the evidence presented, and in accordance with the courts decision in *Feeney* and in *Salter*, the Landlord, in good faith requires possession of the rental unit for his own and his spouse's use as indicated in the N12 notice. I am satisfied that the Landlord has a genuine intention to occupy the premises and, as such, issued the N12 notice in good faith.
27. I also accept the Landlord's evidence that he erroneously issued an N8 notice when he was interested in selling the property and, later, his interests changed due to a change in the real estate market and in his personal circumstances such that moving into the unit with his spouse became more favorable.
28. Although I prefer the Landlord's evidence that the N12 was issued in good faith, there is no dispute between the parties that the Tenant had, and continues to have, outstanding maintenance complaints. In my view, it would serve the Landlord well to address these complaints in accordance with their obligations under the Act if the Landlord has not already done so.

### Compensation

29. The evidence supports a finding that the Landlord paid the one-month compensation to the Tenant in compliance with the Act.

30. Subsections 48.1, 55.1 and 83(4), when read together, require that landlords who terminate a tenancy for their own and/or their spouse's use must provide compensation no later than the termination date indicated on the notice, and the Board is prohibited from ordering an eviction if a landlord had not complied with these provisions
31. There is no dispute that the Landlord paid \$1,200.00 by e-transfer to the Tenant in and around April 13, 2022, which is consistent with the requirements set out in subsections 48.1 and 55.1 of the Act and, as such, would not be grounds for refusing to order an eviction under subsection 83(4).

### Relief from Eviction

32. Subsection 83 (2) of the Act requires the Board to review all of the circumstances and consider whether or not it should exercise its powers under subsection 83(1). Having considered the circumstances, I find that it would not be unfair to postpone the eviction pursuant to subsection 83(1)(b) for 6 months until May 1, 2023.
33. The Tenant testified to the impact an eviction would have on her, explaining that she is a single mother who originally moved to the area as this was the halfway point between where her boyfriend lives in Peterborough, Ontario, and the location where the father of her two children are. She also explained that her two children (who are three and seven years of age), are enrolled in local schools, which in and of itself would create challenges for her to move as she would have to take them out of school and relocate them. In terms of employment, she explained that she was made redundant in August 2022, and, until very recently, had been unemployed, however will be begin a new job with Uber Eats shortly after the date of this hearing. She also explained that she has limited financial resources such that she is in the process of applying for social assistance. In addition, she has limited family and social supports to help her and if evicted, she and her children would need to move into a shelter which would have a detrimental affect on her and her family as a whole.
34. In response to questions posed to the Landlord by the Board, the Landlord explained the impact a delayed or denied eviction would have on him by re-stating that due to limited space in the house shared with his in-laws, and the needs of his growing family (and, specifically, his three year old child), the current residence he shares has led to significant conflict with them such that a timely move is favorable. In the event of a delayed or denied eviction, he explained that the family would likely have to rent a new and separate unit for themselves.
35. Considering all of the evidence and, notwithstanding the Landlord in good faith requires possession of the rental unit for his and his spouse's personal use, I find that, pursuant to subsection 83(1)(b) that it would not be unfair to the Landlord to delay the eviction for 6-months until May 1, 2023 due to the significant impact an early eviction would have on the Tenant and her children.
36. Given the Tenant's connection to the community and vulnerability due to recent unemployment and schooling needs of her two children, I am satisfied that they may

experience challenges securing housing that fits their needs. By contrast, the Landlord continues to have stable housing as the house is not being sold but is to be occupied by his in-laws once the Landlord and his spouse moves into the rental unit. While I acknowledge that the unit in which the Landlord lives no longer meets his needs, after considering the totality of the circumstances I conclude that delaying eviction for a further 6 months from the date of this order is fair and appropriate.

**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 May 1, 2023.
2. If the unit is not vacated on or before May 1, 2023, then starting May 2, 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 May 2, 2023.
4. The Tenant shall also pay the Landlord compensation of \$39.45 per day for the use of the unit starting October 20, 2022 until the date the Tenant moves out of the unit less any amount already paid.

**October 31, 2022**

**Date Issued**

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Emile Ramlochan

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 November 2, 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.