



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

**Citation:** Hamelin v Dymont, 2022 ONLTB 9471

**Date:** 2022-10-19

**File Number:**

**In the matter of:** B-Lower, 314 Midland Avenue  
Midland Ontario L4R3K6

**Between:** Anita Hamelin Landlord

**And**

Katelyn Dymont,  
Kevin Yourk Tenants

Anita Hamelin (the 'Landlord') applied for an order to terminate the tenancy and evict Katelyn Dymont, Kevin Yourk (the 'Tenants') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on June 13, 2022. The Landlords, their legal representative H. Tavroges, the Tenants, and their legal representative C. McMillen attended the hearing.

**Determinations:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Landlord's application is granted.
2. The application is based on an N12 Notice of Termination served on the Tenants on October 18, 2021, with a termination date of December 31, 2021. The N12 indicates that the Landlord requires the rental unit.
3. The Tenant was in possession of the rental unit on the date the application was filed.
4. The Landlord has filed an affidavit sworn by the person who personally requires the rental unit certifying that the person in good faith requires the rental unit for his or her own personal use for a minimum of 1 year.
5. The Landlord paid the Tenant compensation equal to one month's rent. Which was sent by E-transfer and confirmed at the hearing.

**GOOD FAITH REQUIREMENT:**

6. The N12 was served pursuant to Section 48(1) of the Residential Tenancies Act, 2006, (the Act) which states in part:

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

a) The Landlord ...

7. 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 a sincere 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."
8. 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."
9. The Landlord testified at the hearing that she currently resides in the upper unit with her son. That she currently suffers from COPD and has difficulty climbing stairs. The rental unit that is subject to this application is a ground floor unit with no stairs. I accept the Landlord's testimony and find that there is a sincere intention for the Landlord to occupy the rental unit.
10. During the hearing, the good faith intention of the Landlord was not contested much by the Tenants. The big point of contention was more section 83 considerations.

#### 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 November 30, 2022 pursuant to subsection 83(1)(b) of the Act.
12. The Tenants testified that this is a 10-year tenancy and that one of the tenants is 63 years old. The elderly Tenant was experiencing some health concerns and at the time of the hearing was awaiting a pre-booked surgery, that was confirmed for August 9, 2022.
13. The Tenants submitted that they are currently on a waiting list for housing. The one Tenant works full time and the elderly Tenant receives ODSP.

14. The Tenants received notice of the Landlord's intention to move into the rental unit in October 2021. Additionally, although the Tenants have not had the benefit of knowing my decision prior to the order being issued, they have no doubt received an additional 4 months to find alternative housing.
15. In consideration of Section 83 of the Act, I must consider both parties circumstances, not just the Tenants. However, the Landlord in this case has stable housing and is not in jeopardy of losing said housing- Although, there is indubitably some prejudice in postponing the eviction to November 30, 2022, when I balance that with the considerations already noted of the Tenants, I find some additional time reasonable in the circumstances.
16. This order contains all the reasons for the decision. No other reasons will be issued.

**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 November 30, 2022.
2. The Tenants shall also pay to the Landlords \$32.55 per day for compensation for the use of the unit from December 1, 2022, to the date they move out of the unit.
3. If the unit is not vacated on or before November 30, 2022, then starting December 1, 2022, the Landlord 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 Landlord on or after November 30, 2022.

**October 19, 2022**  
**Date Issued**

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Curtis Begg  
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 April 30, 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.