



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

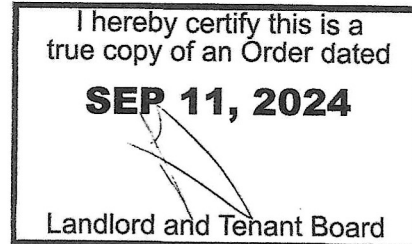
**File Number: LTB-L-048605-23**

**In the matter of:** 72 PROVINCE ST N  
HAMILTON ON L8H4H6

**Between:**

**And**

Jason Kutz  
Hamide Beril gursu-kutz



Landlord

Tenants

(the 'Landlord') applied for an order to terminate the tenancy and evict Jason Kutz and Hamide Beril gursu-kutz (the 'Tenants') 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 3, 2024.

The Landlord, the Landlord's representative G. Gosling and the Tenants attended the hearing.

**It is determined that:**

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On June 19, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of August 31, 2023. The Landlord claims that he requires vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has compensated the Tenant in an amount equal to one month's rent by an e-transfer sent on June 20, 2023. The Tenants acknowledged compensation was sent to them but that payment was not accepted. The Landlord's is required to pay the compensation and this obligation was met on delivery of the e-transfer, whether or not the Tenant's chose to accept it.
5. The Landlord is 33 years old and states he has lived with his parents all his life. He stated that he now wishes to move into the rental unit to live independently and start a family. He also stated he needs additional space to work from home. He stated he owns no other rental properties.
6. The Tenants state they do not believe that the N12 notice was issued in good faith. They have two arguments – they suggest that at the time a previous N12 notice was given for their unit, the Landlord advertised the unit as available for rent, and that the Landlord has

attempted to harass the Tenants into agreeing to pay an illegal rent increase, and as they have not agreed to do so, he is using the N12 notice as a sham in order to have them evicted.

7. A prior N12 notice was given on January 19, 2023, disclosed in the L2 application. An L2 application was filed (LTB-L-006947-23) and the application was dismissed after a hearing on June 12, 2023 as the Landlord had not paid compensation prior to the termination date. A new N12 notice, before me today, was issued a week later.
8. The Tenant Jason Kutz testified for the Tenants. When I refer to evidence of the Tenants, I am referring to the testimony of Jason Kutz.
9. The Tenants introduced documents showing a listing of the rental unit for rent on a website called Zumper. The listing was posted on January 24, 2023, days after the first N12 notice was given. The listing was active for 5 days.
10. The Landlord states that he did not post the advertisement. He learned of the posting in the spring of 2024 when the Tenants delivered their documents in this application. He contacted his realtor and asked if she had posted the ad. She told him that she had not posted it, but that the photos in the listing were the photos the realtor has used when advertising the unit for rent for the Landlord in 2018. The Landlord contacted the Zumper website in April, 2024 and told them he had not posted the advertisement and asked for an explanation of the posting. He was told in an email that based on his statement, the listing and "related users" were suspended. The email from Zumper contains no information about who posted the advertisement in January, 2023.
11. The Landlord stated he believes the Tenants posted the advertisement in January 2023 in order to fabricate evidence to be used to defend the 1<sup>st</sup> N12 notice. The Tenants stated that they did not post the advertisement. I am not satisfied, on a balance of probabilities that the Landlord posted the advertisement or that the Tenant posted the advertisement. I give no weight to the advertisement in my consideration of whether or not the Landlord is acting in good faith.
12. With respect to the Tenant's argument that the Landlord is using the N12 as a ploy for eviction so he can increase the rent, the Tenants introduced several text messages, the first from September 19, 2022 in which the Landlord states that rents have increased and that the rent for the rental unit is significantly below market and that he wants to "work with" the Tenants to make a plan. The Tenants suggest that these texts contain threats of an illegal rent increase and a threat to sell the unit. I have considered the texts referenced by the Tenants and they do not bear this interpretation. The Landlord states in these texts specially that he is not asking the tenants to agree to market rent. He states that he cannot afford to continue to hold the rental unit as an investment and that he is considering selling. It is apparent that there was a proposal to offer the Tenant's a payment in exchange for moving out of the rental unit, which the Tenants did not accept. The Tenants referred to a text on January 12, 2023 stating the Landlord would be issuing an N12 notice for his own occupation. In this text the Landlord reiterated his offer to pay a cash settlement if the Tenants agreed to move. He does not refer to a rent increase in these texts.
13. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement pursuant to section 48(1) of the Act which states:

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,

1. a landlord;
2. the landlord's spouse;
3. a child or parent of the landlord or the landlord's spouse; or
4. a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile Home Park or land lease community in which the rental unit is located.

14. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that the Landlord genuinely intends to move into the rental unit.

15. The courts have provided much guidance to the Board in interpreting the "good faith" and "genuine intent" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.

16. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".

17. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of

residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

18. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”


19. I have considered all of the evidence presented at the hearing and all of the oral testimony, and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
20. Based on the evidence and submissions before me, I am satisfied that the Landlord genuinely intends to move into the rental unit after the Tenant vacates the unit.
21. I do not accept the Tenants’ interpretation that the text messages relied upon establish that the N12 notice is a pretext for unlawful eviction. The texts specifically state that the Landlord is not seeking a rent increase to market, that affordability of the unit “as an investment” is an issue, that the Landlord is considering selling, and ultimately, the Landlord decided to move into the unit. The Tenant Jason Kutz summarized by stating that the Tenants “respect that he wants to move into the rental unit and start his family” but that the effect of this is that the Tenants will be rendered homeless.
22. I accept the Landlord’s evidence that he intends to move out of his parents’ home into the rental unit and I do not find the texts referred to by the Tenant to be inconsistent with this statement from the Landlord. The Landlord in good faith requires possession of the rental unit for the purpose of his own residential occupation for a period of at least one year.
23. The Tenants suggest that there is an ongoing serious breach of the Landlord’s obligation to maintain the rental unit. The specific concerns were that the Landlord has been slow in addressing repair requests and that the maintenance issues outstanding at the hearing were that the front porch was not safe to walk on and that the rental unit needs a sump pump. No other details were provided beyond this testimony and there were no photos or other documents demonstrating the condition of the front porch or the sump pump. Based on this evidence, I find the Tenants have failed to persuade the Board that the Landlord is in serious breach of his maintenance obligations.
24. With respect to considerations under s. 83 of the Act, the Landlord is currently housed and did not suggest there is any urgency in his plans to move. The Landlord notes that the Tenants have been aware of his intention of move into the rental unit since January, 2023. The Tenant Jason Kutz receives ODSP benefits and his wife is employed. The Tenants have a 13-year-old daughter attending school. The Tenants are concerned that she is

showing some signs of disability and are concerned about the effect that moving will have on her condition. The Tenants have looked for alternate accommodation and state that based on their family income, they do not meet a common requirement of landlords in their market that rent should not exceed 50% of a tenant's income and that the Tenants cannot afford to move.

25. 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 December 31, 2024 pursuant to subsection 83(1)(b) of the Act in order to provide the Tenants with additional time to secure new housing appropriate to the needs of their family situation.
26. As the Tenants did not accept the compensation sent to them by the Landlord on June 20, 2023, the Landlord is required to pay the Tenants the sum of \$1,550.00 to replace the compensation they did not accept, by October 15, 2023.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before December 31, 2024.
2. If the unit is not vacated on or before December 31, 2024, then starting January 1, 2025, 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 January 1, 2025.
4. The Landlord shall pay the Tenants the sum of \$1,550.00 by October 15, 2023. If the payment is not made by October 15, 2023, the Tenants shall not be required to vacate the rental unit by December 31, 2024.



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**September 11, 2024**  
**Date Issued**

Jack Jamieson  
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 March 23, 2025 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.

