



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

Citation: Leblanc v Mcfarlane, 2025 ONLTB 2382

Date: 2025-01-03

File Number: LTB-L-037200-24

In the matter of: 307, 369 NORTH RIVER RD
Ottawa ON K1L8C2

Between: Karen Leblanc
Stephen Wilfred Cutts

And

Aaron Mcfarlane



Landlords

Tenant

Karen Leblanc and Stephen Wilfred Cutts (the 'Landlords') applied for an order to terminate the tenancy and evict Aaron Mcfarlane (the 'Tenant') because:

- the Landlords 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 23, 2024.

The Landlords and the Tenant, and the Tenant's partner, Vanessa Martin, attended the hearing. The Tenant requested to speak to Tenant Duty Counsel, however Duty Counsel was not available prior to the start of this proceeding.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated on January 14, 2025.
2. On February 10, 2024, the Landlords gave the Tenant an N12 notice of termination (N12) with the termination date of May 31, 2024. The Landlords claimed that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords.
3. The Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
4. The termination date in the N12 was May 31, 2024. The Landlords have met the 60-day notice requirement of section 48(2) of the Act, and I am satisfied that the Landlords have met the declaration requirement of s.72(1)(b) of the Act.

Compensation

5. Section 48.1 and 55.1 of the Act provide that a landlord must pay a tenant one month's compensation upon service of an N12 Notice (where no other acceptable unit is offered) on or before the date of termination in the N12 Notice as follows:

48.1 A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if the landlord gives the tenant a notice of termination of the tenancy under section 48.

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

6. I am satisfied that the Landlords have met the one month's compensation requirement of s. 48.1 of the Act. The Landlords testified that they had email money transferred the Tenant one month's rent compensation, on May 30, 2024, which the Tenant acknowledged.

Good Faith & Analysis

7. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has 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 simply means that the landlord sincerely intends to occupy the rental unit.
8. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.
9. I am satisfied that, on a balance of probabilities, the Landlords in good faith require possession of the rental unit for the purpose of their personal residential occupation.
10. For this type of application to be successful the landlords must prove, on a balance of probabilities, that they in good faith require the rental unit for the purpose of residential occupation by the person specified in the notice of termination.
11. When deciding "good faith" the Board must consider whether a landlord has a genuine intention to occupy the premises. Whether the landlord's plan is reasonable is not the test: *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).
12. In *Fava v. Harrison* 2014 ONSC 3352, the Divisional Court affirmed that the motives of a landlord in seeking possession of the rental unit are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. The Court also stated the Board can consider the conduct and the motives of the landlord to draw inferences as to whether the landlord desires, in good faith, to occupy the property.

13. The issue before the Board is whether the Landlords intend to move into the rental unit.
14. I accept the Landlords' testimony that they intend to move into the rental unit due to the sale of their previous residence on July 16, 2024. The Landlords have been residing with family and their children since that time and have their belongings in storage, as per the Landlords testimony and evidence submitted.
15. The Tenant testified, that he is planning to move out of the rental unit on November 30, 2024, however he does not have anywhere to reside in the meantime, given his new residence is not available until then, he requested an extended eviction to November 30, 2024. The Tenant testified he has been a responsible Tenant, always paying on time, and has empathy for the Landlords situation, however he was not required to move out of the rental unit on the date of termination in the N12 notice and was entitled to have this proceeding.
16. The Tenant further testified he was displaced from the rental unit from February 2023 to October 2023 due to a flood in the rental unit, which was not part of the proceeding to date, but the Tenant wished to advise the Board, he understands the current situation of the Landlords in regards to their living arrangements.
17. I found the Landlords' testimony to be credible and reliable and I accept their testimony that they genuinely intend to occupy the rental unit.
18. Based on the evidence, I find that the Landlords proved that is more likely than not that they in good faith require the rental unit for the purposes of residential occupation. Specifically, I accept that the Landlords genuinely intend to move into the rental unit once the Tenant vacates.
19. I have considered all the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence or referenced all of the testimony, I have considered it when making my determinations.

Relief from Eviction

20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act, given the Tenant requested only an additional 6 weeks from the date of this proceeding, and that time has passed.

Filing Fee

21. The Landlords incurred costs of \$186.00 for filing the application. However, the Landlords filed the application before the termination date indicated in the N12 notice. In these situations, it is the Board's practice not to order the Tenant pay the Landlords cost to the file application. I do not find any reason to depart from the Board's customary practice, in this is instance.

Last Month's Rent Deposit

22. The Landlords did not collect a rent deposit.

23. This order contains all of the reasons within it and no further reasons will be issued,

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. **The Tenant must move out of the rental unit on or before January 14, 2025.**
2. If the unit is not vacated on or before January 14, 2025, then starting January 15, 2025, the Landlords 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 Landlords on or after January 15, 2025.

January 3, 2025
Date Issued



Panagiotis Peter Roupas
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 July 15, 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.