



Order under Section 69 Residential Tenancies Act, 2006

Citation: Birkett v Younus, 2026 ONLTB 910

Date: 2026-01-07

File Number: LTB-L-073686-25

In the matter of: 304, 173 EIGHTH ST
COLLINGWOOD ON L9Y2C9

Between: Gordon Birkett Landlord

And

Amina Younus Tenant

Gordon Birkett (the 'Landlord') applied for an order to terminate the tenancy and evict Amina Younus (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 December 3, 2025.

Only the Landlord's Legal Representative, Nicole Fazzari and the Landlord attended the hearing.

As of 2:18 p.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the Tenant shall vacate the rental unit by January 28, 2025.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On August 8, 2025, the Landlord gave the Tenant an N12 notice of termination deemed served on August 13, 2025 with the termination date of October 31, 2025. The Landlord

claims that they require vacant possession of the rental unit for the purpose of residential occupation for himself.

4. In support of this application, the Landlord filed his own declaration whereby he declared that he would be moving into the residential unit and would live there for at least one year. That declaration complies with the requirements of section 72(1) of the *Residential Tenancies Act*, 2006, (hereinafter referred to as the "Act.").
5. I have carefully reviewed the documentary evidence before me, the testimony of the party and I have considered the party's submissions. I refer to the material facts and relevant evidence below.

Evidence of Gordon Birkett (GB)

6. GB testified that he requires the rental unit for his own residential purposes for at least one year and most likely longer.
7. GB stated that he previously provided N12 notices to the Tenant with the same intention that he reside in the rental unit. He stated that he prepared the first two applications on his own and that there were technical issues with the date of termination and another technical issue which was why they were dismissed by the Board. He stated that the third N12 notice was given by his Ms. Fazzari but that there was an issue with the timing of the compensation payment.
8. GB stated that it was agreed between the Tenant and he and his Legal Representative that the Tenant would keep the previous compensation paid as the Landlord would be filing another application.
9. GB testified that the compensation was paid on April 29, 2025 to the Tenant in the amount of \$1,194.13. GB directed me to the order, LTB-L-016683-25 whereby he was not ordered to return the compensation paid to the Tenant.
10. GB was not aware of any information that I should be aware of regarding the Tenant and section 83 of the Act.

Analysis and Application of the Law

11. On an application before the Board, the person who seeks an order terminating the tenancy has the burden of leading sufficient evidence to establish that i) the technical requirements of the Act have been met, and ii) it is more likely than not that their version of events is true. In this case, the burden falls on the Landlord.
12. The N12 notice served pursuant to subsection 48(1)(a) of the Act allows a landlord to give a notice of termination if the landlord requires possession of the rental unit for the purpose of residential occupation for at least one year.
13. In making its determinations under section 48, the Board must also consider the good faith intent of the applicants. Under section 72 of the Act, the Board cannot terminate a tenancy

and evict the tenant unless the landlords have satisfied that they are proceeding in good faith.

14. The leading case on the determination of good faith in a landlord's own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a residence. The test before me in this case is whether the Landlord genuinely intends to move into the rental unit and occupy it for a period of at least one year.
15. Based on the evidence and submissions provided, I am satisfied that the N12 Notice was given in good faith and that the Landlord has a good faith intention to reside in the rental unit for the purpose of residential occupation. Accordingly, I find that the requirements set out in subsection 48(1) of the Act have been met.

Compensation and Last Month's Deposit

16. The Tenant was required to pay the Landlord \$1,295.58 in daily compensation for use and occupation of the rental unit for the period from November 1, 2025 to December 3, 2025.
17. Based on the monthly rent, the daily compensation is \$39.26. This amount is calculated as follows: \$1,194.13 x 12, divided by 365 days.
18. There is no last month's rent deposit.

Section 83 Relief

19. 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.

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 18, 2026.
2. If the unit is not vacated on or before January 18, 2026, then starting January 19, 2026, 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 19, 2026.
4. The Tenant shall pay to the Landlord \$1,295.58, which represents compensation for the use of the unit from November 1, 2025 to December 3, 2025.
5. The Tenant shall also pay the Landlord compensation of \$39.26 per day for the use of the unit starting December 4, 2025 until the date the Tenant moves out of the unit.
6. The total amount the Tenant must pay the Landlord is \$1,295.58.

7. If the Tenant does not pay the Landlord the full amount owing on or before January 18, 2026, the Tenant will start to owe interest. This will be simple interest calculated from January 19, 2026 at 4.00% annually on the balance outstanding.

January 7, 2026
Date Issued

Carrie Bertrand
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 19, 2026 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.