



Order under Section 69 Residential Tenancies Act, 2006

Citation: Cai v Javid, 2026 ONLTB 1566

Date: 2026-01-05

File Number: LTB-L-097172-25

In the matter of: 62 DURANGO DR
RICHMOND HILL ON L4S2W2

Between: Qi Cai Landlord

And

Bitu Javid Tenants
Siamak Javid

Qi Cai (the 'Landlord') applied for an order to terminate the tenancy and evict Bitu Javid and Siamak Javid (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.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on December 18, 2025.

The Landlord, the Landlord's witnesses, Yin Li ('YL') and Aixuan Li ('AL'), the Landlord's Mandarin language interpreter, Xiy Chou, the Landlord's legal representative, Hanfei Lin ('HL'), the Tenants, and the Tenants' Farsi language interpreter, Tina Javid ('TJ'), attended the hearing.

Determinations:

1. To be successful on this application, the Landlord must prove on a balance of probabilities that she in good faith intends to use the rental unit for residential occupancy by herself, her spouse and her child for a period of at least one year: see s. 48, *Residential Tenancies Act, 2006*.
2. To prove something on a balance of probabilities one must present sufficient clear, convincing, and cogent evidence to establish that it is more likely than not that something happened or a fact is true: *FH v. McDougall*, 2008 SCC 53 (CanLII), paras 44-46.

3. Section 48 of the Act is intended to balance the respective rights and interests of residential landlords and tenants relative to rental units. The Tenants have an interest in continuing their tenancy and residency at the unit, and the existence of a valid ongoing tenancy gives them a property interest in the unit. Contemporaneously, the Landlord maintains a “residual bundle of rights in the property, subject only to the tenancy”, and has an interest in gaining possession of the unit for her own occupancy and that of her family. Where the Landlord is acting in good faith relative to her professed intention to move into the unit, both parties have common and legitimate interests in occupying the unit: *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), paras 16-17.
4. To meet the “good faith” requirement, the Landlord must prove that it is her genuine intention to move into the rental unit and live there with YL and AL for at least one year: *Fava v. Harrison*, 2014 ONSC 3352 (CanLII), para 17; *Salter v. Beljinac*, *supra*, paras 18-20; *Feeney v. Noble*, 1994 CanLII 10538 (ON SC).
5. It is the Landlord’s genuine intention that is relevant to the legal test, and not the reasonableness of her intentions. Further, the Landlord’s motives are largely irrelevant to whether her intention is genuine, except to the extent that her motives and conduct could be used to draw inferences about her good faith: *Fava v. Harrison*, *supra*, para 17; *Salter v. Beljinac*, *supra*.
6. For the following reasons, I find that the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation of herself, her spouse, and her child for a period of at least one year.
7. The Tenants were in possession of the rental unit on the date the application was filed.
8. On August 25, 2025, the Landlord gave the Tenants an N12 notice of termination with the termination date of November 14, 2025. The rent is due on the 15th day of each month, so November 14, 2025 was the last day of a period of the tenancy.
9. The Landlord is the owner of the rental unit. She and her spouse, YL are presently living in Beijing, but both have permanent resident status in Canada (see DOC-6814943, pp. 48-51). The Landlord’s Permanent Resident Card expires on January 11, 2028, and YL’s expires on March 8, 2027.
10. The Landlord and YL do not have another place to live in Canada, and explained that they have to be present in Canada to maintain their permanent resident status. The Landlord’s evidence was that the purpose of buying this property was to live there. Both the Landlord and YL have remained in China temporarily to help care for their ailing fathers. Their fathers have both passed away, and they intend to move to the rental unit (see DOC-6814943, p. 44).
11. The Landlord and YL both said the rental unit is appealing to them because there is a large Chinese population in the area. YL also said that he and the Landlord have a friend that lives nearby. They both also said that they intend to move into the unit as soon as possible.
12. Both the Landlord and YL explained that to maintain their permanent resident status they are required to be physically present in Canada for at least 730 days in each five-year period: see ss. 28(2)(a)(i), *Immigration and Refugee Protection Act*, SC 2001, c. 27. In

their respective current five-year periods, the Landlord has been physically present in Canada for only about one month, and YL has only been physically present for about two months. This means that, to comply with this requirement, the Landlord would need to be present in Canada for about 700 more days before January 11, 2028, and YL would need to be present in Canada for about 670 more days before March 8, 2027.

13. AL is the daughter of the Landlord and YL. She is a student at McMaster University in Hamilton. She said that part of her program is a “co-op”, and that she intends to seek a co-op opportunity in Toronto, and thereafter intends to pursue a career in Toronto. She said she intends to live in the unit, which would help her financially, and she intends to move into the unit immediately once it becomes available. She said she intends to live in the unit for a few years, until she has her own stable income.
14. AL said she is presently living in a rental unit in Hamilton with roommates. She said she has a room in the basement of the house, and it would not be possible for her parents to move in with her there.
15. Only the Tenant, Bitia Javid (‘BJ’) gave evidence for the Tenants. The Tenants challenge the Landlord’s good faith. BJ adopted the entirety of the declaration she filed as her evidence (DOC-700176), and added some supplementary oral evidence at the hearing.
16. BJ gave evidence that the Landlord has asked the Tenants to leave the property in the past, but then resiled once the Tenants agreed to a rent increase.
17. BJ presented copies of emails relative to this situation (see DOC-7010079, p. 2-4). These communications are from 2021-2022. On December 16, 2021, the Landlord wrote that they would need to increase the rent to \$3,700.00 per month (from \$2,600.00) if the lease was to be renewed, and added: “Or we could take the house and not rent it out. We could get our immigrant visas next year, and we’d need a place to live”. In July 2022 there was another request by the Landlord, through her agent to increase the rent significantly to \$3,900.00 “... so Landlord can use the money to rent another property”.
18. The above-referenced proposals represented rent increases that would be far beyond the rent increase guidelines in place at the time.
19. In her Declaration, BJ stated that shortly before receiving an N12 notice dated November 24, 2024, they received an email from the Landlord stating the rent would increase to \$3075.00 per month beginning in February 2025 (see DOC-7001706, pp. 12-13). I note, however, that this was a guideline increase in the rent (from \$3,000.00 to \$3,075.00 per month), taken in accordance with an N1 notice of rent increase (see DOC-6814943, pp. 7-8). That the Landlord exercised a legitimate statutory right does not suggest a lack of good faith.
20. BJ also claims in her Declaration that the Tenants have overpaid the lawful rent by \$12,734.00 because there was an unlawful rent increase in 2022 from \$2,600.00 to \$3,000.00. That increase was unlawful at the time because it was by more than the guideline amount, and would have also been void pursuant to ss. 116(4) of the *Residential Tenancies Act, 2006*. However, that rent increase is deemed to be lawful and not void because the Tenants paid the increase relative to 12 consecutive periods after it was first charged, and there was no application made by the Tenants where the lawful rent was in

issue in the 12 months following the increase: see s. 135.1, *Residential Tenancies Act, 2006*. After this, there were no further rent increases until the increase to \$3,075.00 effective February 15, 2025.

21. Communications from the Landlord and/or her agents have in the past sought rent increases that were not in accordance with the Act, but the issue before me is not whether the Landlord may have breached the Act in the past. The issue is whether the Landlord genuinely intends to move into the unit for at least one year with YL and AL. The communications at issue, in addition to making requests for rent increases that would not comply with the Act, also reference the Landlord's intention to move into the unit, and/or large rent increases for the purpose of the Landlord being able to use the money to rent other accommodation (see DOC-7008203, pp. 3-4; DOC-7010079, pp. 2-4).
22. In her declaration BJ also challenged the assertion of the Landlord and YL that they do not have any other properties in Canada where they could live. She states that the Landlord owns multiple properties, including another one on the same street, at 17 Durango Drive (see DOC-7001706, pp. 5 & 14). BJ said the Landlord's agent had previously told the Tenants that both the rental unit and the property at 17 Durango Drive were available. On cross-examination, BJ was referred to a parcel register showing that 17 Durango Drive is owned by someone else, and the Landlord has never owned it (see DOC-7008283, pp. 14-18). It may be that the Landlord's agent at the time was also working as the agent for someone else who was offering 17 Durango Drive for rent.
23. BJ also raised in her Declaration that there have been a number of maintenance issues at the unit, and the Landlord has not been responsive in addressing them. She confirmed, on cross-examination, however, that there are presently no outstanding serious maintenance issues that have not been addressed.
24. I found each of the witnesses in this matter to have been sincere and credible. I accept that BJ believes that the N12 notice was not given in good faith, but the evidence before me does not support this position.
25. The evidence, described above, reveals that the Landlord and YL have consistently maintained their intention to move to the rental unit. At times they suggested that if the Tenants agree to rent increases far above the guideline, then the tenancy could continue and the Landlords could use the money to rent somewhere else. In my view, this supports the Landlord's position that she intends to move to the rental unit with YL and AL, but was at the time willing to consider an alternative.
26. BJ pointed out that even if the unit were to become immediately available, given the amount of time that the Landlord and YL have been physically present in Canada since obtaining permanent resident status, YL would still not be able to meet his requirement for physical presence before his Permanent Resident Card expires. While this is true, I still accept that it is the Landlord's genuine intention to live in the rental unit for at least one year with YL and AL. Both the Landlord and YL have more than one year before their respective Permanent Resident Cards expire, and I do not have jurisdiction to adjudicate whether the Landlord and/or YL may be able to maintain their permanent resident status after expiry of their current Permanent Resident Cards even if one or both are not able to meet their physical presence requirements. I am also cognizant of the fact that I must

consider whether the Landlord's intention is genuine, as opposed to the reasonableness of the intention.

27. For the foregoing reasons, I accept that it is the genuine intention of the Landlord, YL, and AL to move into the rental unit and live there for at least one year.

Compensation under section 48.1 of the Act

28. On October 1, 2025, HL mailed the tenants a compensation cheque in an amount equivalent to one month's rent, as required by sections 48.1 and 55.1 of the Act. The Tenants receive the cheque, but did not deposit it and returned it on October 15, 2025.
29. A tenant cannot defeat an application based on an N12 notice by refusing to accept payment of the compensation required by section 48.1 of the Act. I find that the Landlord discharged her obligations under sections 48.1 and 55.1 of the Act by giving the Tenants a cheque for the required amount of money before the termination date in the N12 notice.
30. Even though they returned the cheque, the Tenants are still entitled to the compensation required by section 48.1. HL confirmed she is still holding the funds for this compensation in trust, and is able to issue the Tenant's a replacement cheque. The Landlord will be required to pay the Tenants \$3,075.00 for the compensation required by section 48.1 of the Act by January 19, 2026. To the extent that it is necessary, the deadline by which the Landlords are required to pay the compensation, imposed by section 55.1 of the Act, is extended to January 19, 2026, pursuant to subsection 190(2) of the Act.

Relief from Eviction

31. In her Declaration, BJ states that the Tenant, Siamak Javid ('SJ') has "serious medical conditions, including hospitalizations in the past year", and immediate relocation would disrupt his medical care. These conditions include heart disease and Chronic Obstructive Pulmonary Disease (DOC-7001706, pp. 4 & 8).
32. She also states that the Tenants' daughter is enrolled in a university program affiliated with a hospital that is only 2 kilometers from the unit. BJ states that eviction would disrupt her daughter's education and the family's financial stability to which their daughter contributes (DOC-7001706, pp. 4 & 9-10).
33. BJ submits that the Tenants do not intend to remain in the unit indefinitely, but requires a reasonable amount of time for their daughter to complete her studies. At the hearing, BJ said the Tenants would need eviction to be delayed for one year if the tenancy is terminated.
34. While it may cause (perhaps significant) inconvenience relative to transportation, it is not clear why the Tenants' daughter could not continue with her program, or why SJ could not continue to access and receive needed medical care if the Tenants are required to secure other living accommodation.
35. 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 February 16, 2026 pursuant to subsection 83(1)(b) of the Act.

36. This delay balances the circumstances of the parties, including the Landlord and YL's need to be physically present in Canada in the near future. The Landlord and YL may need to be present in Canada before February 16, 2026, but they are not prevented from returning to Canada before this time and occupying other accommodation, such as a short-term rental, until the unit is vacated by the Tenants.
37. The delay is also intended to provide the Tenants with a reasonable amount of time to secure other living accommodation and lessen the difficulty they may experience in doing so.

Daily Compensation and Rent Deposit

38. The Tenants were required to pay the Landlord \$3,437.40 in daily compensation for use and occupation of the rental unit for the period from November 15, 2025 to December 18, 2025.
39. Based on the monthly rent, the daily compensation is \$101.10. This amount is calculated as follows: \$3,075.00 x 12, divided by 365 days. The Tenants are also required to pay the Landlord \$101.10 per day from December 19, 2025 until the day they move out of the unit.
40. All amounts the Tenants have paid to the Landlord for rent for the periods described in paragraphs 38-39 are deducted from the amount owing.
41. The Landlord collected a rent deposit of \$2,600.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$283.36 is owing to the Tenants for the period from February 1, 2021 to December 18, 2025.
42. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay.

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 February 16, 2026.
2. If the unit is not vacated on or before February 16, 2026, then starting February 17, 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 February 17, 2026.
4. On or before January 19, 2026, the Landlord shall pay to the Tenants \$3,075.00 for the compensation required by section 48.1 of the Act.
5. The Tenants shall pay to the Landlord \$3,437.40, which represents compensation for the use of the unit from November 15, 2025 to December 18, 2025. Any amount the Tenants have paid to the Landlord for rent for this period is deducted from the amount owing.
6. The Tenants shall also pay the Landlord compensation of \$101.10 per day for the use of the unit starting December 19, 2025 until the date the Tenants move out of the unit. Any

amount the Tenants have paid to the Landlord for rent for this period is deducted from the amount owing.

7. The Landlord owes \$2,883.36 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.
8. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

January 5, 2026
Date Issued

Mark Melchers
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 August 17, 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.