



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

**Citation:** Plyley v Miller, 2026 ONLTB 1813

**Date:** 2026-01-06

**File Number:** LTB-L-004933-25

**In the matter of:** 1, 9 BURTON AVENUE  
BARRIE ON L4N 2R3

**Between:** John Gregory Plyley  
Diane Katherine Robinson

Landlords

**and**

Krista Miller

Tenant

John Gregory Plyley and Diane Katherine Robinson (the 'Landlord') applied for an order to terminate the tenancy and evict Krista Miller (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.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on December 16, 2025.

The Landlord and the Tenant and the Tenant's support person Graydon Miller-Hall attended the hearing. The Landlord was represented by Shalini Puri who appeared as agent for the Landlord's legal representative Sridhar Mula. The Tenant was represented by Reginald Bent.

### **Determinations:**

1. On December 28, 2024, the Landlords gave the Tenant an N12 notice of termination appointing February 28, 2025 as the date of termination. The Landlords claim under section 48 of the *Residential Tenancies Act, 2006* (the 'Act') that they require vacant possession of the rental unit for the purpose of residential occupation by J.P. who is the son of the Landlord John Gregory Plyley. The Landlords has proven the grounds for termination of the tenancy on a balance of probabilities. The tenancy will be terminated on April 30, 2026.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. The Landlord has compensated the Tenant an amount equal to one month's rent by February 28, 2025 as required by section 48.1 and 55.1 of the Act.

### The Law

4. In order to succeed on this application, the Landlords must prove on a balance of probabilities that they in good faith require the rental unit for residential occupation by J.P. for a period of at least one year. Good faith in this context means a genuine intention.<sup>1</sup>
5. Landlords seeking to repossess their property for personal use do not need to demonstrate that their plans are reasonable; a genuine intention is sufficient.<sup>2</sup> However, I may consider the conduct and the motives of the Landlords in order to draw inferences as to whether the Landlords in good faith desire to repossess the rental unit for the intended occupant. The Landlords carry the burden of proof. It is the good faith intention of the Landlords that must be proven although that proof may come from any other credible evidence, such as the testimony of the intended occupant.
6. The Board is of course permitted, indeed required by section 83, to consider all of the circumstances including the reasonableness of the Landlords' decision and their motives in drawing inferences about the Landlords' good faith and for determining what if any relief from eviction is warranted.<sup>3</sup>

### The Evidence

7. The intended occupant J.P. testified that he has decided to relocate his home-based business from his condo in downtown Toronto to Barrie so he might be nearer to his parents who live in Orillia and are advancing in age. He testified he plans to make the rental unit his primary full-time residence for at least several years. He also hopes to use the opportunity to scout new talent for his modelling agency in Simcoe County.
8. The Landlord John Gregory Plyley confirmed that the Landlords intend for his son J.P. to take over residential occupancy of the rental unit. He added that in addition to wanting to be nearer to the Landlords, J.P. is looking for a lifestyle change. He'd like to live somewhere with a garden to accommodate his dog and to be nearer to the outdoor activities he enjoys in the area.
9. I detected minor inconsistencies in the testimony of the two witnesses who testified on behalf of the Landlords but do not find them sufficiently material to undermine the Landlords' good faith intention which I accept on a balance of probabilities. John Gregory Plyley testified J.P. would keep his Toronto condo as his office and travel there as needed while J.P. testified he would likely give it up and rent it. John Gregory Plyley also testified that J.P.'s business was thriving while J.P. testified it is facing increased competition. This evidence may show that John Gregory Plyley is not intimately familiar

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<sup>1</sup> *Salter v. Beljinac*, 2001 CanLII 40231 at paras. 18, 26-27 (Ont. Div. Ct.); *Fava v. Harrison*, 2014 ONSC 3352 at para. 17 (Div. Ct.).

<sup>2</sup> *Fisher v. Michel*, 2022 ONSC 6558 at para 30 (Div. Ct.).

<sup>3</sup> *Caputo v. Newberg*, 2009 CanLII 32908 at para. 10 (Ont. Div. Ct.).

with his son's business but does not suggest that the Landlords do not genuinely intent to have J.P. live in the rental unit.

10. The Tenant questioned the Landlords' good faith by pointing out that they delayed some three months between their first unsuccessful attempt to repossess the rental unit and serving this second N12 notice of termination. I don't find this evidence undermines the Landlords' good faith intention. At its absolute highest, it may demonstrate that the Landlords are in no urgent need to repossess the rental unit but they never suggested that they were.
11. The Tenant also pointed to a handwritten notation on a contractor's receipt that says "keep until we sell Burton Ave" to invite the inference that the Landlords' true intention is to sell the rental unit. I accept the Landlords' explanation that this is a note to themselves to preserve this document. I also accept the testimony of John Gregory Plyley that the Landlords have no intention to sell the rental unit in the foreseeable future because it is confirmed by the testimony J.P. and there is evidence to contradict it. That a person may make a note to themselves to preserve records for later reference by realtors, contractors, accounts, solicitors, etc. in the event of a future sale does not, without more, necessarily imply that the person planning to sell.
12. The Tenant further challenged the Landlords with rather unfortunate commentary John Gregory Plyley had written about his views of landlords' duties to accommodate disabled tenants. The evidence was aimed at undermining the credibility of its author or potentially to show the Landlords' true intention is to repossess the rental unit so they can shirk their duties under the *Human Rights Code*. This evidence has only marginal relevance to the issues in this application and its limited probative value is grossly outweighed by its prejudicial effect. I need not repeat the misguided comments here. I choose not to admit this evidence for the purpose it was tendered but in case of error, I admit it but give it virtually no weight for reasons stated. This evidence does not logically allow the inferences the Tenant invites because there is no allegation raised, nor any evidence presented that might even remotely suggest, the Landlords have ever discriminated against this Tenant or members of her family over this 20-year tenancy based disability or any other protected ground.
13. Guided by subsection 202(1) that requires me to ascertain the real substance of all transactions and activities relating to the rental unit and the good faith of the parties, I find the Landlords have proven on a balance of probabilities that they in good faith require the rental unit the purpose of residential occupation by their child.

#### *Relief from Eviction*

14. Even though the Landlords have established the grounds for their application, I am required by section 83 of the Act to consider the disclosed circumstances of both parties to determine if it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act or whether the Board is required by law to dismiss the application pursuant to subsection 83(3):

**83(1)** Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) refuse to grant the application unless satisfied, having regard to all the circumstances, that it would be unfair to refuse; or
- (b) order that the enforcement of the eviction order be postponed for a period of time.

\* \* \*

**83(3)** Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

- (a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;
- (b) the reason for the application being brought is that the tenant has complained to a governmental authority of the landlord's violation of a law dealing with health, safety, housing or maintenance standards;
- (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights;

15. I cannot accept the Tenant's position that the Board must refuse to grant the application for either of the reasons she advanced.
16. In the first place, the Tenant submits that this application is retaliatory and must be refused by operation of clause 83(3)(b) and/or clause 83(3)(c). Specifically, the Tenant feels the Landlords have determined to drive her out of the rental unit now that she has complained to the municipal authorities about the alleged disrepair. Quite apart from the fact that I find the disrepair is not proven, the Tenant's position makes no sense. The Tenant testified that she contacted the municipality in May 2025 on the advice of her doctor. This is well after this application was filed and well after the Landlords' initial (unsuccessful) application to repossess in April 2024. The Landlords could not have filed this application on January 18, 2025 in response to the Tenant's complaints because she hadn't lodged them yet.
17. Second, the Tenant submitted that the Landlords are in serious breach their maintenance obligations. The Tenant testified that the roof is falling down, that there is a severe rodent and mold infestation and that the Landlords did not remediate the basement after two floods that occurred in 2022 and 2023. The Landlords denied the allegations and offered testimony, supported by correspondence filed, that the municipality investigated the Tenant's concerns and closed their file without further action. They testified they have no knowledge of the 2022 flood which is consistent with the Tenant's evidence that her neighbour fixed it.
18. With respect to the 2023 flooding event, I accept the Landlords' evidence and find they have proven on a balance of probabilities, with reference to an invoice filed, that when the municipal watermain burst in August 2023 flooding the basement, they immediately hired a specialist contractor who fixed the leak and remediated the damage to the basement. This

is consistent with the Tenant's testimony that the Landlords have been conscientiously responding to her maintenance requests throughout the years and also consistent with her testimony that the rental unit is safe and habitable as of the time of the hearing. I find the flooding is neither serious nor ongoing and therefore does not engage the operation of subsection 83(3)(a).

19. About the rodents, the Tenant testified that the Landlords hired pest control technicians in response to her concerns. The Tenant has not voiced her disrepair allegations in applications before the Board and the Tenant did not produce the text messages she sent to the Landlords about her concerns. I find there is no credible evidence that the Tenant renewed her complaints about pests after the Landlords hired the pest control technicians. There is no credible evidence that the issue is serious and ongoing as of the time of the hearing. The same can be said of the mould and of the roof falling down. The Tenant testified the mould was remediated and the affected area repainted. The falling roof was only mentioned in passing and not pursued by any other evidence.
20. Third, the Tenant submitted that the Board must refuse the application because the Landlords have deprived her the use of the basement. The allegation is that the Landlords did not restore the basement to its pre-flood condition after August 2023 and took the position the Tenant shouldn't be using it anyway. The Tenant says that since the basement was included in her tenancy, the Landlords' attempt to restrict her use of it is a breach of a material covenant of her tenancy agreement. Neither side produced a written tenancy agreement. The Tenant produced historic "before" videos showing she and her child used the basement in the past but showed me nothing in support of her testimony that the basement is currently unusable. She did not testify that she does not at present use the basement. Assuming without decided that the basement is included as part of the rental unit, I find there is no credible evidence that they Landlords have breached the tenancy agreement whether oral or implied.
21. The Tenant produced no photos or videos or anything else to corroborate her allegations although the Tenant did produce videos of the basement showing she used it historically. This suggests to me that the Tenant appreciates the evidentiary value of corroborating materials and I draw an adverse inference from her omission to produce any corroboration in support of her allegations about the Landlords' failures.
22. Except where expressly prohibited by law (or in some cases expressly required by law), an adverse inference is discretionary. The trier of fact may, where it is warranted upon consideration of all the circumstances, draw an adverse inference against the party who is in possession or control of relevant evidence but fails to produce it without adequate explanation. The inference that may be drawn is that the evidence would be contrary to the party's case or at least would not support it. This is not a rule of law nor a rule of evidence. It is an expression of logic and human experience that may in appropriate cases inform the fact-finding exercise. In this case, I received no explanation for the Tenant's failure to produce photos or videos or any other documentation to corroborate any of her disparate allegations. I draw the inference that none exists.
23. Therefore I find the Tenant has not adduced sufficient credible evidence to satisfy the Board the Landlords are in breach of their maintenance obligations or other obligations under the tenancy agreement nor that any of the alleged breaches is serious or ongoing as

of the time of hearing nor that the reason this application was brought is because the Tenant has lodged complaints with the municipality or otherwise attempted to secure her rights.

24. 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 April 30, 2026 pursuant to subsection 83(1)(b) of the Act in recognition of the Tenant's very long tenure at the rental unit; and that she will require additional time to find another place to live given her modest means and the need to transition her adult child who lives with her.

Miscellaneous

25. I decline the Tenant's invitation to dismiss the application by authority of subsection 197(2) because the Landlords "filed documents that [they] knew or ought to have known contained false or misleading information." I recognize that the documentary evidence filed by both sides could have been more complete but there was nothing on the record to suggest that any of the Landlords' materials were false or misleading.
26. The Tenant was required to pay the Landlord \$7,577.64 in daily compensation for use and occupation of the rental unit for the period from March 1, 2025 to December 16, 2025.
27. Based on the monthly rent, the daily compensation is \$26.04. This amount is calculated as follows: \$792.00 x 12, divided by 365 days.
28. There is no last month's rent deposit.
29. There shall be no costs.

**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 April 30, 2026.
2. If the unit is not vacated on or before April 30, 2026, then starting May 1, 2026, 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 May 1, 2026.
4. The Tenant shall pay to the Landlords \$7,577.64, which represents compensation for the use of the unit from March 1, 2025 to December 16, 2025.
5. The Tenant shall also pay the Landlords compensation of \$26.04 per day for the use of the unit starting December 17, 2025 until the date the Tenant moves out of the unit.
6. The total amount the Tenant must pay the Landlords is \$7,577.64.
7. If the Tenant does not pay the Landlords the full amount owing on or before April 30, 2026, the Tenant will start to owe interest. This will be simple interest calculated from May 1,

2026 at 4.00% annually on the balance outstanding.

**January 6, 2026**

**Date Issued**

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**Nersi Makki**

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 November 1, 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.