



Order under Section 69 Residential Tenancies Act, 2006

Citation: Gortnar v Roberge-Pellerin, 2026 ONLTB 2329

Date: 2026-01-07

File Number: LTB-L-061855-25

In the matter of: Main Floor, 35 Lansdowne Ave
Toronto ON M6K2V7

Between: Joseph Gortnar Landlord

And

Marie Roberge-Pellerin Tenant

Joseph Gortnar (the 'Landlord') applied for an order to terminate the tenancy and evict Marie Roberge-Pellerin (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.

This application was heard by videoconference on December 9, 2025.

The Landlord's son, Joe Gortnar (Jr.), the Tenant, and the Tenant's representative, Angel Xing, attended the hearing.

Preliminary Issue:

1. At the outset of the hearing only the Landlord's Realtor, Jonathan Marchensan, was present for the Landlord. Mr. Marchensan stated that the Landlord is his client, and that the Landlord asked Mr. Marchensan to represent him for this hearing. Mr. Marchensan is not a licensee of the Law Society of Ontario.
2. Section 30 of By-Law 4 under the Law Society Act sets out who may, without a licence, provide legal services in Ontario that a licensee who holds a Class P1 licence (Paralegal) is authorised to provide. Mr. Marchensan is not a friend, neighbour, or relative of the Landlord and therefore would only qualify to represent the Landlord if he met the conditions under subsection 30 (7) which states:

Other profession or occupation

7. An individual,

- i. whose profession or occupation is not the provision of legal services
 - ii. who provides the legal services only occasionally,
 - iii. who provides the legal services as ancillary to the carrying on of her or his profession or occupation, and
 - iv. who is a member of the Human Resources Professionals Association of Ontario in the certified Human Resources Professional category.
3. The Landlord's Realtor does not meet the fourth criteria of subsection 30 (7) under By-Law 4 and therefore I did not allow him to appear as the Landlord's representative providing legal services that a Paralegal is authorized to provide.
4. The hearing was stood down to allow the Landlord's Realtor time to contact the Landlord and ask him to attend. When the hearing reconvened, the Landlord's son, Joe Gortnar (Jr.) attended to represent the Landlord. The Landlord's son meets the exemption of who may provide legal services without a licence under subsection 30(5) of By-Law 4. As such I was satisfied that the Landlord's son could appear to represent the Landlord in the Landlord's absence.

Determinations:

5. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On July 13, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of September 30, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
8. The Landlord has compensated the Tenant an amount equal to one month's rent by September 30, 2025.

Testimony and Evidence

9. The Landlord's son testified that he is presently living in his marital home with his ex-spouse. The Landlord's son stated that he separated from his wife approximately three years ago and that they have been trying to cohabitate in the same house for the sake of their parenting responsibilities. The Landlord's son maintained that he stays in the basement of the home most of the time and that his present living arrangement with his ex-spouse is no longer tenable which is why he would like to reside in the Tenant's rental unit.
10. It was undisputed that the Landlord served two other N12 notices to the Tenant. The first N12 notice was served on or about January 7, 2025, and the second was served on or about July 13, 2025. Both notices indicated that the Landlord's child intended to move into the rental unit.

11. The Tenant's position is that the Landlord is not acting in good faith and only wants to evict her because of the contentious relationship between them.
12. The Tenant testified that the Landlord and his son believe she is a hoarder and have asked her to leave because of the state of her unit though the Tenant stated she has not been served with any other type of eviction notice such as an N5 or an N7. The Tenant further testified that the Landlord often comes to the property to harass her and that on Jun 18, 2025, the Landlord came to the rental unit and threatened the Tenant with physical violence. The Tenant submitted a video of this interaction with the Landlord.
13. The Tenant further submitted text conversations with the Landlord's son on October 16, 2024, and November 7, 2024. In the October 16th text the Landlord's son is telling the Tenant she must clean the apartment. A portion of the text message reads as follows:

...

Marie, you're going to have to clean your apartment.

It is a fire hazard, a health, hazard, rodents, possibly, etc., I hope you try to understand me what I'm trying to say to you. I know you and my father do not get along well unfortunately but I will [sic] telling you the truth. They are back on the 21st and if he sees the state of the apartment it's not going to be positive in anyway [sic].

I do not want to force you or make you you are an adult and know this yourself but the truth is, I can only hold off for so long which I have for many years actually.

I have no other way of saying this to you, but you need to clean And empty out your apartment because I will be forced to do something which I don't want to do.

...

14. The follow up message from the Landlord's son sent to the Tenant on November 7, 2024, states the following:

The reason for me meeting you was to inform you that I am going to ask you to move out of the apartment.

I wanted to speak to you personally last week and today but unfortunately my truck was stolen.

Fact is that I've asked you many many times over the years to empty out the space. You have not. It's actually worse.

This is difficult but it's going to happen. It's disappointing to me my house being in this state. The apartment is packed full and also the front hall and porch.

You will be served forms for termination of [sic] apartment at 35 Lansdowne.

There are a few ways on [sic] doing this so I hope that we can do this respectfully. No more warnings cause [sic] you haven't done a thing to improve the situation it's worse.....

15. The Landlord's son confirmed that the Tenant has spoken to him about her concerns regarding what the Tenant perceives to be harassing behaviour of the Landlord. The

Landlord's son stated he has not been present personally to confirm the allegations of the Tenant and that his father is 90 years old and almost deaf. The Landlord's son believes that his father may just be speaking loud and not actually yelling at the Tenant.

Analysis – Good Faith

16. The Divisional Court in *Mason v. Azubalis*, 2025 ONSC 5770 clarified the test to be applied to an eviction application for “personal use” where a landlord serves an N12 notice of termination for residential occupation by a family member.
17. Where a landlord gives an N12 notice of termination for occupation of the rental unit by a family member, the Board must determine under s. 48(1) of the Residential Tenancies Act, 2006 (the ‘Act’) whether the landlord in good faith requires the rental unit for possession by the family member. While the Board must also determine whether the intended occupant genuinely intends to move into the rental unit, that determination in and of itself does not satisfy the test in s. 48(1) without a finding about the landlord’s intention. This is consistent with the leading case of *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), which also involved a landlord who gave a notice of termination for his son’s personal use.
18. *Mason v. Azubalis* further clarifies that there is no requirement under the Act for the Landlord to provide direct evidence (such as through testimony) and in appropriate circumstances, a landlord’s intention can be inferred from the evidence of other witnesses. In this case the Landlord’s son, who is the intended occupant was present to testify. However, the testimony and evidence before me has not satisfied me, on the balance of probabilities, that the Landlord in good faith requires the rental unit for the purpose of his son’s occupation. I say this for the following reasons.
19. The Tenant provided clear and credible testimony that the Landlord has wanted her to vacate the rental unit for the past year due to his belief that the Tenant is a hoarder. Without the Landlord present to testify on the interactions between the parties, I am left with the Tenant’s somewhat uncontested evidence of the contentious nature of their relationship which was supported by the Tenant’s video of one such exchange. I do not find the video supports the Landlord’s son’s submission that his father is simply hard of hearing and so must raise his voice.
20. The text exchange submitted by the Tenant further supports her submission that the Landlord is unhappy with what he perceives to be the unclean state of her unit. In fact, the text from the Landlord’s son on November 7, 2024, indicates that the Tenant will be served termination forms because she has not cleaned and emptied the unit as was requested. The Tenant was then served with the first N12 notice of termination shortly thereafter.
21. It may very well be that the Landlord’s son does truly intend to move into the rental unit if the Tenant vacated but that is only part of the test to be applied. Based on the testimony and evidence before me, I am not satisfied that the Landlord is acting in good faith. I find it more likely that the Landlord is using the personal use eviction notice (N12) as a means to remove the Tenant because of the strained relationship.
22. As I have found that the Landlord did not serve the N12 in good faith, the Landlord’s application must be dismissed.

23. I do note that even if I had made different determinations other than outlined above, the Landlord would still be faced with a dismissal of his application due to the requirement set out by section 72(1)(a) of the Act which states:

72 (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on,

(a) a notice of termination given under section 48 on or after the day section 13 of the *Rental Fairness Act, 2017* comes into force, **unless the landlord has filed with the Board an affidavit sworn by the person who personally requires the rental unit** certifying that the person in good faith requires the rental unit for his or her own personal use for a period of at least one year;

(b) ...

[Emphasis added]

24. The declaration filed with the Landlord's application was filed by the Landlord himself and states "our son Joey Gortnar will be assuming the main floor apartment at 35 Lansdowne Ave, Toronto Ontario M6K2V7 for at least one year". The declaration is signed in wet ink by Joseph Gortnar and Maria Gortnar.

25. The Landlord did not file a declaration or affidavit sworn by his son, Joey Gortner (Jr.), which was the person who required the rental unit.

Return of compensation

26. The Tenant was given compensation as required by the legislation because the Landlord served them with a notice pursuant to section 48 of the Act. As the Tenant will not be required to vacate, the Tenant shall return the one month's rent compensation to the Landlords as ordered below.

27. 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.

28. This order contains all of the reasons for the decision within it and no further reasons will be issued.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant will repay the \$1,249.00 compensation they received from the Landlord based on the N12 notice of termination.
3. If the Tenant does not pay the Landlord the full amount owing on or before February 7, 2026, the Tenant will start to owe interest. This will be simple interest calculated from February 8, 2026 at 4.00% annually on the balance outstanding.

January 7, 2026
Date Issued

Melissa Anjema
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.