



Order under Section 69 Residential Tenancies Act, 2006

Citation: Graham v Fehr, 2026 ONLTB 3048

Date: 2026-01-14

File Number: LTB-L-078485-25

In the matter of: 6110 Kister Road
Niagara Falls ON L2G0B9

Between: Nancy Graham Landlord

And

Tim Fehr Tenant
Catharine Marshall

Nancy Graham (the 'Landlord') applied for an order to terminate the tenancy and evict Tim Fehr and Catharine Marshall (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 January 6, 2026.

The Landlord and the Tenant attended the hearing.

Determinations:

1. The Landlord served the Tenant with an N12 notice of termination for own use stating that the Landlord intends for the Landlord's care provider to live in the rental unit. The termination date in the N12 notice is October 31, 2025
2. Section 48.1 of the *Residential Tenancies Act, 2006* (the 'Act') requires a landlord who has served an N12 notice to give the tenant compensation in the amount of one month of rent.
3. As of the date of the hearing the Landlord had not paid the Tenant compensation in the amount of one month of rent.

4. Section 55.1 of the Act requires a landlord who is obligated to give compensation to a tenant under s.48.1 to pay that compensation no later than the termination date in the N12 notice.
5. Subsection 83(4) of the Act provides that “The Board shall not issue an eviction order in a proceeding regarding termination of a tenancy for the purposes of residential occupation ... until the landlord has complied with section 48.1, 52, 54 or 55, as the case may be.”
6. At the hearing, the Landlord stated that she attended at the rental unit on September 1, 2025, to deliver the N12 notice and told the Tenant that September rent need not be paid because it would equal the compensation owing under section 48.1. The Tenant nevertheless paid September rent a few days later in cash. The Landlord explained that she did not understand that she was required either to return the rent or to provide a cheque to compensate the Tenant on or before October 31, 2025. The Landlord stated that she could make the payment at the hearing and asked the Board to exercise discretion under section 190(2) of the Act to extend the deadline for payment to the hearing date.
7. The Tenant testified that when the Landlord delivered the N12 notice on September 1, 2025, the Landlord did not mention any waiver of the September 2025 rent and discussed only the last month rent deposit for October 2025. The Tenant stated that upon deciding to dispute the notice of termination, they continued to pay rent for September and October 2025. The Tenant further testified that when they delivered those payments, the Landlord did not advise that September or October rent would be waived to satisfy the one-month compensation requirement.
8. There was no corroborating evidence from the Landlord. I therefore had only the conflicting testimony of the parties. On any application before the Board, the party who alleges that a particular incident or event occurred bears the burden of leading sufficient evidence to establish that it is more likely than not that their version of events is true. In this case, that burden rests with the Landlord. I find that the evidence is insufficient to establish on a balance of probabilities that the Landlord informed the Tenant on September 1, 2025, that September rent was waived to constitute compensation under section 48.1, or that October rent was waived for that purpose.
9. Moreover, the Landlord admitted at the hearing that after receiving rent for September and October 2025, she did not take any other steps to compensate the Tenant, such as returning funds or delivering a cheque to the rental unit on or before October 31, 2025. She had ample opportunity to make the payment before the termination date but did not do so.
10. In my view, one purpose of the requirement, when an N12 notice is served, is to ensure that a tenant has funds available to facilitate a move on or before the termination date. If compensation is not paid by the deadline in section 55.1, the tenant may be deprived of the practical ability to choose whether to move. In recognition of that purpose, strict compliance with the deadline is required. The Board declines to extend the deadline under section 190(2). In any event, subsection 83(4) creates a statutory bar to issuing an eviction order until the landlord has complied with the compensation requirement.

11. Because the Landlord did not pay the compensation required by section 48.1 before the termination date in the N12 notice as required by section 55.1, the application must be dismissed pursuant to subsection 83(4).

It is ordered that:

1. The Landlord's application is dismissed without consideration of its merits.

January 14, 2026
Date Issued

Joy Xiao
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.