



Order under Section 69 Residential Tenancies Act, 2006

Citation: MERCADER v Khanafer, 2025 ONLTB 94510

Date: 2026-01-09

File Number: LTB-L-069939-25

In the matter of: 415 HARESFIELD CRT
MANOTICK ON K4M0B6

Between: Eden Mercader Landlords
Patrick Mercader

And

Nour Khanafer Tenants
Arwa El-Husseini
Ismail Khanafer
Rim Khanafer
Mohamad Khanafer

EDEN MERCADER and Patrick Mercader (the 'Landlord') applied for an order to terminate the tenancy and evict Nour Khanafer, Arwa El-Husseini, Ismail Khanafer, Rim Khanafer, and Mohamad Khanafer (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on December 4, 2025. The Landlord, Eden Mercader, the Landlords' Legal Representative, M. Connolly, and the Tenants, Arwa El-Husseini, mother, and her daughters, Nour Khanafer and Rim Khanafer attended the hearing. The Landlords' son and witness, J. Mercader (JM) also attended the hearing.

Determinations:

1. As explained below, the Landlords have not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenants are in possession of the rental unit.

Landlords' Evidence

3. On August 23, 2025, the Landlords served the Tenants with a Notice to End your Tenancy Because the Landlord, a Purchaser, or a Family Member Requires the Rental Unit (N12) with a termination date of October 31, 2025. The Landlord indicated in the notice that they

required vacant possession of the rental unit for the purpose of residential occupation for their child.

4. The Landlord testified that their son, JM, who is a second-year university student, intends to occupy the rental unit for a period of at least one year. JM currently resides at home but due to the lack of adequate public transportation in their area, his parents have to drop him off at the train station and his commute is longer than usual. The Landlord claimed that the commute is easier from the rental unit to his school.
5. The rental unit is a three-bedroom townhouse and although the Landlords have not given it some thought, they may stay over sometimes, but the other two bedrooms will be vacant until JM graduates in two years and starts to pay rent.
6. The Landlord acknowledged on cross-examination that she had a discussion with the Tenant, Arwa El-Husseini, at a coffee shop in May 2023. At that meeting, the Landlord informed the Tenant that her son might occupy the unit in his first year of university, but she was agreeable to a rent increase instead. The Landlord stated that JM was still in high school at that time, and when he later got into the university, he lived in the residence for one year.
7. JM testified that there is no bus service from their home and being a new driver, the slippery roads cause him anxiety and he relies on his parents to drop him at the train station for his commute to school. He anticipates that the travel time from the rental unit to school will save approximately 30 minutes.

Tenants' Evidence

8. The Tenant, Arwa El-Husseini, testified that it is inconceivable for the Landlord to seek to evict a family of four given their cordial relationship. The Tenants have sought alternative accommodation but have not been able to secure one. Comparable units usually cost up to \$600.00 more and are smaller.
9. The Tenant, who moved into the rental unit in December 2021, is a single mother, with two daughters, one employed and the other seeking employment, and a son who is in the university. The Tenant stated it was unfair to evict them to save travel time, and requested additional time to secure alternative accommodation should the tenancy be terminated.
10. The Tenants, Nour Khanafer and Rim Khanafer, testified that their brother attends the same university as JM and suggested a new bus service which started running in September 2025 may be suitable for JM, who will not be saving as much commute time from the rental unit as he envisions.
11. The Tenants' search for alternative accommodation may also be hampered by their need for a basement unit with a washroom and a window because Arwa El-Husseini works from home.
12. The parties agree that in accordance with the *Residential Tenancies Act, 2006* ('the Act'), the Landlords paid to the Tenants compensation of \$2,339.11, an amount equal to one month's rent, by e-transfer on September 13, 2025. The Tenants have declined depositing the money, but the Landlords have continued to resend it each time the deposit period lapsed.

Analysis

13. Section 48 (1) of the Act provides that a Landlord may, by notice, terminate a tenancy if the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by the landlord; the landlord's spouse; a child or parent of the landlord or the landlord's spouse.
14. The courts have provided significant guidance to the Board in interpreting the "good faith" requirement" contained in section 48 of the Act.
15. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762 ("Feeney"), the Ontario Divisional Court made a decision under a similar provision in subsection 103(1) of the *Landlord and Tenant Act*, [R.S.O. 1990, c. L.7](#), and held that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal".
16. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the "good faith" requirement under subsection 51(1) of the *Tenant Protection Act*, 1997, S.O. 1997, c. 24. The Court referred to *Feeney*, *supra*, and held that:

"...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA."
17. More recently, in *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) ("Fava"), the Divisional Court, in considering the good faith requirement in s.48(1) of this Act, determined as follows:

"We accept, as reflected in *Salter*, *supra*, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the **only issue is whether the landlord has a genuine intent to reside in the property**. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property." [emphasis added].
18. Thus, the Board is entitled enquire into the motives and conduct of a landlord in determining the issue of good faith and to draw inferences about the landlord's intentions based upon the totality of the evidence presented.
19. In this case, the Landlords gave the N12 notice of termination indicating that their child, in good faith intends to reside in the rental unit for at least one year. However, the evidence demonstrates that in May 2023, they had indicated their interest in him occupying the rental unit but were agreeable to an increased rent instead. It was unclear from the evidence whether a rent increase subsequently took place.
20. The rental unit is a three-bedroom townhouse occupied by a family of four, and I find it unlikely that the Landlords who appeared willing to forego their child moving into the rental

unit a year earlier for increased rent, would now have him occupy the rental unit without any rent payment and leave two bedrooms vacant for extended periods of time.

21. Based on the foregoing, I am not satisfied, on a balance of probabilities, that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for their child.
22. Furthermore, section 83(2) of the Act requires me to consider all the disclosed circumstances and determine whether it would be unfair to deny or delay eviction pursuant to subsection 83(1) of the Act. Hence, even if I did not find that the notice was given in bad faith, having considered the interests of both parties and the effects of termination of the tenancy, I find it to be fundamentally unfair to evict the Tenants in order for the Landlords' son to occupy one bedroom in the three-bedroom townhome.

It is ordered that:

1. The Landlords' application is dismissed.

January 9, 2026
Date Issued

Jitewa Edu
Member, Landlord and Tenant Board

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