



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-071597-25

In the matter of: Upper, 122 Lock Street
Peterborough ON K9J2Y4

Between: Hugh Birch Landlord

And

Rachel Henderson Tenant
Michaela Farrell

Hugh Birch (the 'Landlord') applied for an order to terminate the tenancy and evict Rachel Henderson and Michaela Farrell (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 10, 2025.

The Landlord and both named Tenants attended the hearing. The Landlord's Legal Representative Crystal Francey also attended.

Determinations:

1. 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.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On May 30, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of July 31, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The rental unit is a home divided into two units; the upper unit is the rental unit while the lower unit is occupied by the Landlord.
5. The Landlord testified that he has been living in the lower unit for approximately four and half years. He testified that his lifestyle is changing and his mother, within whom he co-owns a 100-pound dog is aging. He testified that he is obligated to take care of the dog, as

his mother is struggling with in her advanced age, and will soon have to taken possession of the dog from her.

6. He testified that the upper unit is larger, about three times the size of the lower unit and will be better suited for the dog. He also testified that the upper unit has a great bathtub. He also testified that he has lived in the complex for 10 years total and sleeps better upstairs. He would also like to entertain the idea of getting a roommate to combat loneliness which will be possible in the upper unit. However, the Landlord stressed that his primary motivation was the large dog.
7. The Landlord does not know when he will be taking the dog.
8. He testified that he did not know what would be happening to the lower unit, though it is a possibility that his mother may move in, as the unit is more accessible.
9. The Landlord also testified that he was upset that the Tenant's had moved a foster child into the rental unit with them. This appears to have caused friction between the parties.
10. The Tenant Rachel Henderson testified that they and their partner reside in the rental unit with a foster child. The rental unit is a one-bedroom on paper but is functionally a two bedroom.
11. They testified that they began the processing of applying to foster their child in December 6, 2024 and began fostering on February 14, 2025. The Tenant testified that they are fostering the child in collaboration with two private agencies and the process has required multiple home inspections and child proofing steps to ensure that the rental unit was adequate for the child.
12. The Tenant testified that their foster child has autism, and after they move din the Tenant's began to receive messages from the Landlord complaining about the child and the noise generated. They testified that on one occasion the child had a meltdown for 45 minutes and they received a constant chain of messages from the Landlord accusing them of abusing the child and stating he would be contacting the police
13. The Tenant testified that at first, they had no lease agreement with the Landlord and the arrangement was that he would rent the unit to them at a below market rent with the understanding that there would be increase of 5% per year. The Tenant testified that they paid the first of these increases then subsequently refused on the basis that they did not comply with the rental increase guidelines. The Tenant testified that after they refused to pay the second increase the Landlord sent them a series of angry test messages stating that they could no what they need to do, and he would do what he needed to do.
14. The Tenant allowed that the Landlord first notified her on December 19, 2024, that his mothers health was declining and he may need to make changes to his living situation, but noted that this conversation occurred after they refused the 5% rental increase.

Analysis

15. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a genuine intention to occupy the premises and not the

reasonableness of the landlord's proposal. This principle was upheld in *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), where the Court held that the "good faith" requirement simply means that the landlord sincerely intends to occupy the rental unit.

16. In the more recent case of *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are "largely irrelevant", however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.
17. In this case, I find it likely that the Landlord genuinely intends to occupy the rental unit. However, given the circumstances before me I am not satisfied that my analysis should stop there.
18. Based on the party's testimony I am satisfied that the Landlord was motivated to serve this N12 Notice of Termination based on the Tenant's moving their foster child into the rental unit. It was clear from the Landlord's testimony that he is unhappy with the child in the rental unit, and I accept the Tenant's testimony that he has complained of the child on multiple occasions and threatened to involve police and other authorities.
19. While the Landlord did not outright state that this was part of his motivation, based on the parties testimony at the hearing, the Landlord's messages to the Tenants and his threats to involve authorities I am prepared to infer this forms part of the Landlord's motivation in serving the N12 at this time.
20. While I accept that the Landlord was contemplating a change in his living situation in December 2024, prior to becoming aware of the foster child, I am not satisfied that this demonstrates the Landlord had formed an intention to occupy the rental unit by that time.
21. Additionally, even if the Landlord had been contemplating occupation of the rental unit, I am still satisfied that this particular N12 which is before me today, was motivated by the presence of the child. In support of this finding note that the Landlord testified that he did not know when he would be taking possession of the dog, which represents his primary motivation for occupying the rental unit, and the Landlord does not the know what will be happening to the lower unit that he currently occupies. This suggests to me that this particular N12, served when it was, was motivated not by a desire to secure the rental unit but instead a desire to remove the Tenant's and their child.

22. Section 3(4) of the Residential Tenancies Act, 2006 states:

Conflict with other Acts

(4) If a provision of this Act conflicts with a provision of another Act, other than the *Human Rights Code*, the provision of this Act applies. 2006, c. 17, s. 3 (4).

23. The Human Rights Code, R.S.O. 1990 States:

Accommodation

(1) Every person has a right to equal treatment with respect to the occupancy of accommodation, without discrimination because of race, ancestry, place of origin,

colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, marital status, family status, disability or the receipt of public assistance.

24. In short, the Code provides protection against discrimination, in a number of social areas including accommodation, on the basis of a number of protected grounds, including family status.
25. I am satisfied that the Tenant's family composition constitutes family status under the Code, and they are protected against discrimination on this basis. Accordingly, I find that the Landlord's election to serve this N12 Notice of Termination based in part on the Tenant's family status would constitute discrimination under the Code.
26. Therefore, I find that the N12 does not comply with the Code and is therefore invalid and the Landlord's Application must be dismissed.

Section 83

27. 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 grant relief from eviction pursuant to subsection 83(1)(a) of the Act.
28. Even if I were not satisfied that it is appropriate to dismiss the Landlord's Application based on the Code, I would still grant relief from eviction pursuant to Section 83 of the Act. I accept that the Tenant's foster child has finally adjusted to the rental unit, and I also accept that the Tenant's may struggle to find a suitable alternate unit for themselves and their child, and the child may be removed from their care. I also note that it appears that the child has finally been provided a measure of stability in their life, which will certainly be disrupted if the tenancy is terminated.
29. Against this I weight the Landlord's desire to live in a larger unit with his dog, and his desire to utilise the great bathtub in the rental unit. I have also considered that the Landlord's mother may be impacted, if the Landlord is unable to accept care of the dog.
30. When I consider all of the circumstances, I am satisfied that it would not be unfair to grant relief by denying the eviction. While the Landlord may be inconvenienced if the eviction is denied, he will not be prejudiced to the extent that the Tenants and their child will be. While the Act is careful to balance the rights of landlords and tenants it does have a tenant-protection focus, and the Act allows me to exercise discretion and consider all circumstances when contemplating whether a denial or delay of eviction is appropriate. In this case, I find that it is appropriate to exercise that discretion to deny eviction, and I am satisfied that it would not be unfair to do so.

It is ordered that:

1. The Landlord's Application is dismissed.

January 15, 2026
Date Issued

Reid Jackson
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.