



Order under Section 69 Residential Tenancies Act, 2006

Citation: Esteves v Raghav, 2026 ONLTB 2843

Date: 2026-01-16

File Number: LTB-L-051179-25

In the matter of: 2nd Fl, 1249 COLLEGE ST
TORONTO ON M6H1C3

Between: Alice Esteves Landlord

And

Shweta Raghav Tenant

Alice Esteves (the 'Landlord') applied for an order to terminate the tenancy and evict Shweta Raghav (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 November 27, 2025.

The Landlord's legal representative Fernando Teixeira, the Landlord, and the Tenant attended the hearing. The Landlord was assisted by interpreter Ida Marques.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy nor the claim for compensation in the application. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination- Landlord's Own Use

3. On June 19, 2025, the Landlord gave the Tenant an N12 notice of termination with a termination date of August 31, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.

4. The Landlord testified that the residential complex has a basement, main, and upper floor. The basement is rented to other tenants, the Landlord resides on the main floor, and the Tenant lives in the upper floor. The Tenant's rental unit is self-contained with a bedroom, bathroom, and kitchen.
5. The Landlord's evidence is that they require the Tenant's rental unit for their friends and family to use during the holidays. The Landlord also testified that she is 77 years old and may also require use of the Tenant's rental unit for someone to assist her with her health and maintaining the residential complex.
6. The Landlord gave evidence that she may use the space personally because she enjoys going upstairs and may sleep there at times. The Landlord did not definitely testify about how often she would be using the rental unit.
7. The Tenant's evidence is that she moved into the rental unit in October 2022 and that the Landlord had previously asked the Tenant to move out in July 2023 because the Landlord's relatives were coming from Portugal.
8. The Tenant testified that she moved out of the rental unit on August 31, 2023, and within days of moving out the Landlord asked the Tenant to move back, which she did.
9. The Tenant gave evidence that she would speak with the Landlord about her family situation and the Landlord had told the Tenant that she never married, doesn't have children, and only has one niece that lives in Portugal who the Landlord hasn't met personally.
10. The Tenant disputes that the Landlord requires possession of the rental unit for friends and family because in the three years the Tenant has lived in the residential complex, there has only been one visit from the Landlord's family in August 2025.
11. The Tenant also testified that she believes that the Landlord is exaggerating her need for assistance and support because the Landlord is very healthy, fit, and still shovels snow at 77 years old.

Analysis

12. The Landlord's application is based on an N12 notice of termination served pursuant to section 48 of the Act which provides:

48 (1) 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,

(a) the landlord;

13. The case of *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), holds that the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the Landlord's proposal.

14. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC), where the Court held that the “good faith” requirement simply means a sincere intention to occupy the rental unit.

15. In *Fava v. Harrison*, [2014] O.J No. 2678 ONSC 3352 (Ont.Div.Ct.) the Court determined that while the motives of the Landlord are, per *Salter*, “largely irrelevant”, the Board can consider the conduct and motives of the Landlord to draw inferences as to whether the Landlord desires, in good faith to occupy the property.

16. In paragraph 6 of the Board’s decision in LTB-L-078104-23-RV, the Board considers the Divisional Court’s determinations in *Feeney* and *Fava* and makes the following conclusion:

“The Divisional Court’s decisions in *Feeny* and *Fava* do not remove the statutory requirement in sections 48 and 49 of the Act that for a landlord or purchaser to evict a tenant for their own use, that the intended use of the property needs to be for residential occupation. Nor do the decisions remove the Board’s discretion under section 83 of the Act to delay or deny an eviction.”

17. Accordingly, consideration must be given as to whether the intended use of the rental unit is for “residential occupation”.

18. Further at paragraph 8 of LTB-L-078104-23-RV the Board considers a number of other decisions, including the Divisional Court decision in *Kohen v. Warner*, 2018 ONSC 3865, all of which affirms the proposition that occasional or infrequent use of the rental unit does not constitute residential occupation:

“The Board has held that occasional or infrequent use of the rental unit does not constitute residential occupation: TSL-80318-16 (Re), 2017 CanLII 14304 (ON LTB), upheld by the Divisional Court; *Kohen v. Warner*, 2018 ONSC 3865; TSL-65943-15 (Re), 2015 CanLII 94908 (ON LTB); CET-33575-13 (Re), 2014 CanLII 71654 (ON LTB); NOL-09721-12 (Re), 2012 CanLII 74622 (ON LTB); TSL-08570-10 (Re), 2010 CanLII 76079 (ON LTB). The Board has also held that leaving the rental unit empty after the tenant vacates was found not to be residential occupation: TEL-01943 (Re), 2007 CanLII 75965 (ON LTB).”

19. The Landlord’s testimony is that she may occasionally sleep in the rental unit or use it for her friends and relatives during visits. Similar facts were considered in LTB-L-042482-24 at paragraph 12:

“The Landlord’s own testimony indicates that they wish to occupy the rental unit so that they have additional space for when family and friends come visit and confirmed that they do not intend to move out of the lower unit even after they have occupied the rental unit.”

20. The Member in LTB-L-042482-24 dismissed the Landlord’s application on the basis that occasional or infrequent use of the rental unit does not constitute residential occupation, also citing the Divisional Court’s decision in *Kohen v. Warner*, 2018 ONSC 3865.

21. While the decision in LTB-L-042482-24 is not binding on me, I am persuaded by the similar facts and the interpretation of the decision in *Kohen v. Warner*, [2018 ONSC 3865](#) as it applies to those facts.
22. Accordingly, based on the evidence before me, I find that the Landlord's intended use of the rental unit would be intermittent or infrequent use that does not constitute residential occupation.
23. Further, the Landlord testified that the rental unit may be used for someone who will provide her with assistance in the future. The Act specifically contemplates a situation where a Landlord requires possession of the rental unit for the residential occupation of a caregiver at section 48(1)(d):

48 (1) 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,

(d) a person who provides or will provide care services to the landlord, the landlord's spouse, or a child or parent of the landlord or the landlord's spouse, if the person receiving the care services resides or will reside in the building, related group of buildings, mobile home park or land lease community in which the rental unit is located. [Emphasis added]

24. If the the Landlord intends for a caregiver to occupy the rental unit the Landlord may serve notice pursuant to section 48(1)(d) however, an unidentified potential future caregiver is not a permissible use pursuant to section 48(1)(a).
25. Even if I were satisfied that the Landlord's intended use of the rental unit constitutes residential occupation, the Landlord's request for eviction would be denied pursuant to section 83(2) of the Act.
26. The Landlord seeks possession of the rental unit for the purpose of housing family and guests during occasional visits. When considering the prejudice in evicting the Tenant or displacing the Landlord's infrequent visitors, the prejudice to the Tenant far outweighs any prejudice the Landlord may experience.

Return of one month's compensation

27. In accordance with section 73.1(1) of the Act, the Tenant is ordered to pay back to the Landlord, any compensation received in relation to this matter.

It is ordered that:

1. The Landlord's application is dismissed.
2. If the Tenant has cashed the compensation cheque provided by the Landlord, the Tenant shall pay the Landlord \$700.00 for the return of the one month's compensation.

3. If the Tenant does not pay the Landlord the full amount owing on or before January 20, 2026, the Tenant will start to owe interest. This will be simple interest calculated from January 21, 2026, at 4.00% annually on the balance outstanding.

January 16, 2026

Date Issued

Kyle McGraw

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.