



Order under Section 69 Residential Tenancies Act, 2006

Citation: Stewart v Chase, 2026 ONLTB 6099

Date: 2026-01-22

File Number: LTB-L-074767-25

In the matter of: Main Floor Bedroom, 279 ALBERT ST
WATERLOO ON N2L3T7

Between: Robert A Stewart Landlord

And

Kern J Chase Tenant

Robert A Stewart (the 'Landlord') applied for an order to terminate the tenancy and evict Kern J Chase (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 December 9, 2025.

The Landlord's Legal Representative, Shaun Harvey, the Landlord and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy and/or 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.
3. On September 5, 2025, the Landlord gave the Tenant an N12 notice of termination deemed served on the same date with the termination date of November 30, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for himself.

4. In support of this application, the Landlord filed a declaration dated September 6, 2025 whereby he declared in good faith that he would be moving into the residential unit for one year. This declaration complies with the requirements of section 72(1) of the Residential Tenancies Act, 2006 (hereinafter referred to as the "Act").
5. I have carefully reviewed the documentary evidence before me, the testimony of the parties and I have considered the parties' submissions. I refer to the material facts and relevant evidence below.

Evidence of Robert Stewart (RS)

6. RS testified that he currently lives in a basement room at 285 Albert Street which is very close to the rental unit. He is currently living in a student rooming house and he requires a place where there are fewer stairs.
7. RS stated that he currently has to climb 12 stairs to get to the bathroom.
8. RS stated that he is scheduled to have surgery on December 30, 2025 and that he needs to reside in a main floor room. He explained that the rental unit that the Tenant currently resides in has only 3 steps from the back door. This unit would be more accessible for him.
9. RS stated that he requires this space for a one year period so that he can recover from his surgery and there will be less stairs for him to climb.
10. RS testified that he arranged for Mr. Harvey to send a letter to the Tenant to advise him not to pay rent for the month of October 2025 which would be the Tenant's compensation.

Evidence of Kern Chase (KC)

11. KC testified that the Landlord was not bringing this application in good faith and he wanted to show me a couple of documents.
12. KC stated that in September of 2024, his Landlord approached him about increasing his rent to \$750.00 from \$500.00 per month. KC stated that he was not aware of his rights and agreed to paying \$750.00 per month starting on September 1, 2024. KC paid this monthly rent until the end of April of 2025. KC had asked some questions of other friends and learned a little about tenant's rights and he advised the Landlord that he would start paying \$500.00 per month on May 1, 2025, rather than the \$750.00 per month.
13. KC stated that he did pay \$500.00 in rent to the Landlord on May 1, 2025. KC then received a letter from the Landlord dated May 30, 2025 which notified him that he had to move out of the unit because the Landlord required possession of the unit for personal use. KC stated that the letter stated that he had to move out by August 1, 2025. This letter became an exhibit, DOC#6901741.
14. KC further pointed out that he did not sign this document where the Landlord stated "please acknowledge receipt of this notice by signing and returning the enclosed copy." However the Landlord had signed the copy on May 30, 2025.

15. KC stated that after he received that letter on May 30, 2025, the Landlord stopped accepting his rent of \$500.00 per month. The Tenant attempted to pay rent for June, July, August and September of 2025 but the Landlord continuously refused to accept the rent.
16. KC then brought my attention to another letter, DOC#6345064 that he received from Mr. Harvey on September 5, 2025 which stated that the previous agreement between the Landlord and the Tenant to increase the rent was not allowed by the Act. This letter confirmed that the Tenant's regular, monthly rent was \$500.00.
17. KC read one section of the letter out loud that he felt was important. "As a result of the above you have made an overpayment towards your rent of \$2,000.00 between the periods of September 1, 2024 to April 30, 2025. The landlord has applied the overpayment towards the rent arrears that were owing for the months of June, July, August and September of 2025. As of this letter, September 5, 2025, your rent is paid in full up to September 30, 2025,"
18. KC stated again that he was not in arrears of rent but that the Landlord refused to accept his rent of \$500.00 per month for June, July, August and September. KC stated that he tried to give the rent to the Landlord every month and he refused.
19. KC testified that the Landlord's actions prove that the Landlord is not bringing this application in good faith. KC stated that the Landlord clearly wanted to get rid of him as a Tenant by refusing his rent and then stating that he was in rental arrears, by charging him an illegal rent and providing two notices of termination in less than 5 months. Further he stated that after the Tenant refused to pay the \$750.00 on May 1, 2025, he received a notice of termination from the Landlord because the Landlord wanted his rental unit. He then received the second notice of termination on September 5, 2025.

Analysis and Application of the Law

20. On an application before the Board, the person who seeks an order terminating the tenancy has the burden of leading sufficient evidence to establish that i) the technical requirements of the Act have been met, and ii) it is more likely than not that their version of events is true. In this case, the burden falls on the Landlord.
21. The N12 notice served pursuant to subsection 48(1)(a) of the Act allows a landlord to give a notice of termination if the landlord requires possession of the rental unit for the purpose of residential occupation for at least one year.
22. In making its determinations under section 48, the Board must also consider the good faith intent of the applicants. Under section 72 of the Act, the Board cannot terminate a tenancy and evict the tenant unless the landlords have satisfied that they are proceeding in good faith.
23. The leading case on the determination of good faith in a landlord's own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a

residence. The test before me in this case is whether the Landlord genuinely intends to move into the rental unit and occupy it for a period of at least one year.

24. The subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives [*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC)]
25. *Fava v. Harrison* allows me to draw inferences about the Landlord's good faith through the Landlord's conduct and motives. The Landlord was evasive when answering questions and the answers that he did provide were self-serving. He was not a credible witness and he failed to provide any medical proof of his upcoming surgery or instructions from the surgeon about not being able to handle stairs. This was his whole reasoning for wanting to move into the Tenant's rental unit.
26. Further the Landlord's evidence demonstrated that he believed that he had every right to manage the rental unit in a way that he felt was best. He increased the rent illegally, he refused to accept rent from the Tenant and retaliated against him by giving him a notice of termination when the Tenant tried to pay the correct, legal rent.
27. The Landlord also took the position that the Tenant had gotten himself into rental arrears when the Landlord refused to accept the legal rent for June, July, August and September. This was set out in Mr. Harvey's letter dated September 5, 2025 where he stated that the Tenant was in "rental arrears." I find that the Tenant was not in arrears of his rent due to the Landlord's refusal to accept rent which was a contravention of the Act.
28. The Tenant provided his evidence in a straightforward matter and did not exaggerate the situations he found himself in with the Landlord. The Tenant provided corroborating evidence of the Landlord's behaviour while he was paying the extra rent and after the Tenant refused to pay the illegal rent.
29. This is the Landlord's case to prove and I am not convinced that the Landlord's version of events was more believable than the Tenant's version.
30. The Landlord has not proven that they in good faith require possession of the rental unit for the purpose of their own residential occupation for at least a year. As such, the application will be dismissed.
31. Furthermore, even if I were to find that the Landlord was making this application in good faith, which I did not, this is a circumstance where the Board must refuse the application. Section 83(3) sets out circumstances where refusal is required and it states "Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that (c) the reason for the application being brought is that the tenant has attempted to secure or enforce his or her legal rights."
32. The Tenant was attempting to enforce his right not to pay illegal rent. The Tenant paid his proper \$500.00 rent on May 1, 2025 and by May 30, 2025, the Tenant had received his

first N12 notice of termination (although not in an official form). I find that the Landlord retaliated against the Tenant.

33. For the above reasons, the application will be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.

January 22, 2026
Date Issued

Carrie Bertrand
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.