



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-084108-24

In the matter of: Basement Bachelor Unit, 53 SPRUCE HILL
RD
TORONTO ON M4E3G2

Between: Doreen Spreer-Pimenta Landlord
Martin Spreer-Pimenta

And

Edward Barker a.k.a. Ted Barker Tenant

Doreen Spreer-Pimenta and Martin Spreer-Pimenta (the 'Landlord') applied for an order to terminate the tenancy and evict Edward Barker a.k.a. Ted Barker and Canadian Centre for Housing Rights (CCHR) (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 March 17, 2025, September 19, 2025, November 7, 2025 and December 19, 2025.

The Landlord's Legal Representative, Shellyann Pereira, the Landlord, Martin Spreer-Pimenta, the Landlord, Doreen Spreer-Pimenta, the Landlord's witness, Alexander Spreer-Pimenta, the Tenant's Legal Representative, Julie Matheson and the Tenant, Ted Barker attended the hearing.

Determinations:

Preliminary Matter

1. The Tenant's Legal Representative stated that the Landlord did not disclose all of the N12 that they were served with in the application and therefore the Landlord's application ought to be dismissed. The Tenant was served with the first N12 Notice, with a termination date of May 31, 2024. This N12 Notice was not disclosed in the L2 Application. There was an L2 Application filed based on the first N12 Notice, however that was dismissed as per

order LTB-L-036116-24 issued on October 30, 2024.

2. The Landlord's Legal Representative stated that the first N12 Notice named the former landlords, and the reasons was for the purchaser's child's own use. The N12 Notice that the Landlord served on the Tenant, was for his child's own use, therefore it is the same reason. The Landlord did not mislead the Tenant, and it is always been the Landlord's intention to have his son move into the Tenant's rental unit, and the reason for the N12 remained the same and was only re-served due to a fatal error which was address in the order issued on October 30, 2024.
3. Based on the submissions of both parties, I am unable to find that the L2 application as filed is now invalid in respect of sub-section 71.1(3) of the Act. The Act does not provide a clear consequence for a landlord's failure to meet their disclosure obligation under subsection 71.1(3). Sub-section 71.1(4) of the Act states that "*The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)*" but the Act does not specifically address what happens if the N12 notice is not disclosed.
4. In my view, the intent of section 71.1(3) of the Act is to allow a Member to consider the pattern of a landlord's past conduct and whether the absence of disclosure materially effects the merits of the case. In this case, it is clear that the Tenant was aware of the first N12 that was not disclosed on the application and were aware of the reason for the N12 notice. Although the first N12 Notice was served for Purchaser's own use, the current Landlords were the purchaser's at the time that the first N12 Notice was served, and therefore I do not find that the Landlord attempted to deceive the Tenant, as his intention with the previous N12 notices was clear, for his child's own use.

Determinations

5. For the reasons that follow, I find that the Landlord in good faith requires possession of the rental unit for the purposes of residential occupation for themselves. The tenancy between the Landlord and the Tenant will be terminated.
6. There was a lot of oral and documentary evidence provided at the hearing, however this order will reflect the evidence that I found to be relevant to the application before me.
7. On October 11, 2024 the Landlord served a N12 Notice of Termination (N12 Notice) on the Tenants. The N12 notice states that the Landlord's son intends to move into the rental unit and occupy it for at least one year. The N12 Notice sought possession of the rental unit for December 31, 2024.
8. The issue to be determined before the Board is whether the Landlords have satisfied the "good faith" requirement set out in subsection 48(1) of the Act which provides: 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 by:
 1. The landlord's child;

The Landlords' good faith intention

9. The onus is on the Landlord to establish that the Landlord in good faith requires the rental unit for the purpose of residential occupation.
10. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Divisional Court held that:

The test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...

11. Thus, the Landlord must establish that they genuinely intend to move into the rental unit. The Court also found in *Salter* that the Landlords' motives are "largely irrelevant".
12. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), the Divisional Court considered this issue in the context of subsection 103(1) under 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".

13. More recently, in *Fava v. Harrison*, 2014 ONSC 3352, the Divisional Court, in considering this issue in the context of the *Residential Tenancies Act*, 2006, found 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."

14. The issue on an application like this is whether or not the Landlord's son genuinely intends to move in.
15. The Landlord's son provided a declaration dated October 10, 2024, stating that he, in good faith requires the rental unit for his own use, and that he will reside in the rental unit for minimum of one year.
16. The parties agree that the Landlord provide to the Tenant one month's worth of compensation, as required under section 48.1 of the Act.

Landlord's Evidence

Landlord's Witness

17. The Landlord's son, Alexander Spreer testified at the hearing. Mr. Spreer stated that he has a genuine intention to occupy the rental unit, for more than one year. He stated that he wants to move in as soon as possible as he does not have his own living arrangements. He testified that he has been living between his parents and his sister. A lot of his items

are in storage as he has very limited space where he is staying now. Mr. Spreer stated that his living accommodations are very temporary, and he would like to have his own place to live in. In addition, he goes to a university nearby and he plans to occupy the rental unit for the duration of his studies. A copy of the university program enrollment was submitted as evidence to the Board.

18. During cross examination, Mr. Spreer testified that there are two bedrooms in his parents' unit, however the other one is his mom's office. There is a shed on the property however that is his mom's office only when his sister wants to have guests over, and his mother cannot work there in the winter. He will not be paying rent or utilities when he moves into the rental unit, and he is not aware of any renovations that will be taking place

Landlord's Evidence

19. The Landlord testified that he lives at the top of the rental unit, his daughter lives on the main floor, and his son is going to be moving into the basement. The Landlord testified that at the time of entering the sales agreement, his son was accepted to Western University. However, a day or two after he was accepted to Western University, he received an acceptance from Toronto Metropolitan University. The Landlord testified that he served this N12 Notice in good faith, and his intention when purchasing this triplex was to have his son reside in the basement, his daughter reside on the main floor, and him and his wife reside on the top floor. In their Purchase and Sale Agreement, it states that his son will reside in the basement of the rental unit, and his intention has not changed. A copy of the signed Purchase and Sale Agreement dated March 22, 2024 was submitted as evidence to the Board.
20. The Landlord stated that the Tenant is refusing to vacate the rental unit, and states that he has a disability that would make it difficult, however he has seen the Tenant move heavy items around the rental unit. A video of the Tenant was submitted as evidence to the Board.
21. During cross examination, the Landlord testified that prior to moving to this rental unit, he lived in a three-bedroom unit, and both of his children live there with him and his wife. He does not currently have plans to renovate the rental unit. At one point, he thought he was going to convert the garage however that is too expensive. Regarding the shed, his wife used it as an office when his daughter had her friends over, however as it is not winterized it is not suitable for an office all year around. The Landlord stated that he discussed with the Tenant where is an appropriate place to smoke, as his wife has severe asthma. If the Tenant smokes in the patio area it affects his wife as her bedroom is right above the patio. It is not a pleasant smell, and it goes into other rental unit. The Landlord testified that they tried to work with the Tenant, however the Tenant refused which led the Landlord to serve the Tenant an N5 Notice. The Landlord testified that he is not prohibiting the Tenant from smoking, however he requested that the Tenant smokes in the front of the rental unit, where there is a designated smoking area.

22. The Landlord stated that he believes the made two videos, and that looking at the Tenant the Landlord would not guess that he has a disability, however he does not medical training nor is he stating that the Tenant does not have a disability.

Tenant's Evidence

23. The Tenant testified that he does not believe that the Landlord served this N12 Notice in good faith. He stated that he is an impaired senior with ongoing health issues and is living on low income. He has living in the rental unit for approximately 9 years. The Tenant testified that since the Landlord has purchased the property, the Landlord has been engaging in harassing behaviour, which included serving two N12 Notices and various N5 Notices.
24. When he received the first N12 Notice, from the former landlord, all of the tenants who used to reside in the rental unit, collectively worked to obtain legal advice on their options. He stated that the other tenants came to a resolution with the former landlord, however he opted to exercise his rights through the Board, as he wanted to delay the possibility of him being homeless and he has the right to a hearing.
25. The Tenant testified that the former landlord advised him that his rental unit would be safe, and that he would have to vacate. He took the former landlord's word, however another tenant called him and advised that the former landlord was not renewing their lease. The Tenant stated that he was co-operative during the showings, and ensure the rental unit was in a proper and clean state. It was his understanding that the former landlord was going to sell it to investors, and that would not have to vacate from the rental unit.
26. The Tenant stated that prior to obtaining legal representative, he received an email from the Landlord in September 2024, and he felt that it was threatening in nature. The Tenant stated that in the letter, it appeared as though the Landlord's Legal Representative would know how the Board would decided on this matter. He stated that he is not a bad Tenant, and he moved into this rental unit as he cannot afford anything else. At this time, the only thing that he can afford is a shared accommodation rental unit.
27. The Tenant testified that the Landlord served two N12 Notices, and an N5 Notice on March 1, 2025 with a termination date of March 17, 2025. In addition, the Landlord stated that another N5 Notice will be served. The Tenant states that the Landlord's actions are contrary to the *Human Rights Code*.
28. The Tenant stated that the Landlord served a notice of entry for September 11, 2025 and the two main reasons for entering are to determine that the rental unit is in a good state of repair and to determine the repairs required for the rental unit as there are approximately 46 holes in the rental unit.
29. The Tenant stated that the Landlord's Legal Representative sent an email to his Legal Representative and the contents of it are harassing in nature and made allegations that the Tenant caused damage to the rental unit, which are false. This letter made inappropriate remarks, about him not looking for another rental unit, forcing himself into the Landlord's family, and The Tenant stated that since the Landlord served him with a N12 Notice, he received a significant amount of emails from the Landlord's Legal Representative, and that this constitutes harassment. The Tenant stated that he pays his rent and does not cause

any issues for the Landlord. He states that the Landlord's Legal Representative should not have been sending emails about this matter, and it is up to the Board to determine whether an eviction is lawful.

30. The Landlord has also asked him why he is not working, which is found to be inappropriate. He takes issue with the fact that the Landlord has taken videos of him. He has clearly advised the Landlord that he has a disability.
31. The Tenant testified that he chose to live in this rental unit as it is in a safe neighborhood and close to shops. He stated that in 2023, he made approximately \$16,000.00 per his 2023 tax assessment. He stated that in 2024 he started receiving his CPP, which is approximately \$280.00, monthly. After paying his monthly rent of \$1,005.00, he has approximately \$700.00 leftover. The Tenant testified that he has looked for other apartments, however all he could afford a shared accommodations which he does not want to move into unless he is forced to. The Tenant testified that he has been working with Chrissy since 2023, who is a tenancy specialist and works for an agency. The Tenant submitted a letter from Chrissy John-Power which summarizes the difficulty that the Tenant has experience in finding another rental unit given his income and that him facing eviction is giving him anxiety and affecting his mental health. He stated that he has signed up for affordable housing, however there is an approximate fifteen year wait. The Tenant stated that once he turns 65 years old in March, he will receive another benefit which will slightly increase his income, and therefore is requesting a delay until March 31, 2026 should the Board grant the Landlord's application.
32. The Tenant testified that he sustained an injury on June 19, 2007 which has caused him significant injury. The Tenant submitted a Functional Abilities Assessment dated July 11, 2009. Part of the assessment's purpose was to provide an assessment of his ability to conduct simple day to day tasks. The Tenant stated that he cannot afford to get to the physician for a re-evaluation, and that is why he has not seen the doctor in over a decade. The Tenant testified that he has a permanent impairment. The Tenant testified that he no longer could afford massage therapy treatments, however the analysis is still accurate. He testified that he used to be able to do a lot of physical labour and play sports, however he is not longer able to due to this chronic pain. When it is cold outside, it affects his pain. However, he is able to some physical labour without any pain, which is why the Landlord has seen him doing some tasks around the house.
33. The Tenant testified that having to move out of the rental unit would have a big impact on him. Packing and physically moving would be difficult for him, He has a lot of large items that he would have to sell and/or get rid of and that would take time. In addition, he does not have money to hire a moving company and does not have money for storage. The Tenant testified that it would be unfair to grant the eviction as he is a senior with disabilities. In addition, there is term "Aging in place" which came from the Canadian Government that states seniors should be not evicted. The Tenant testified that he is not going to live there forever however he needs more time to find a new way of living. He should not be forced to go into shelters.
34. During cross examination, the Tenant stated that the rental unit is in good repair. Regarding the smoking, he stated that he walks out to the curb to smoke and was making every effort to be courteous regarding the Landlord's request. Regarding his disability, he

is able to do some gardening, and he agrees that he did some plumbing, electrical work, landscaping, cleaning and paint preparation.

Legal Analysis

35. I find the evidence of the Landlord to be credible and his evidence to be believable and consistent regarding his and his family's circumstances to move into the rental unit and have more space for him and his family. I accept the Landlord's testimony that he requires the rental unit for his son to move into. The Landlord's son provided credible and consistent testimony that he intends to reside in the rental unit for more than one year. I find that the Tenant offered insufficient evidence to oppose that of the Landlord's.
36. I heard the Tenant's testimony that the Landlord did not provide him accommodation under the *Human Rights Code* ("the Code"), however the Tenant did not offer sufficient evidence to demonstrate that he requested an accommodation the Landlord refused. I heard the Tenant's submissions regarding the smoking in the rental unit, however I find that the Landlord did not prohibit the Tenant from smoking, but just requested that he smoke in a designated smoking area, due to his wife's asthma. Regarding the multiple N5 Notices, I heard the Tenant's submissions that this was against his human rights, however I do not find that the Tenant led sufficient evidence to demonstrate that the Landlord's conduct infringed on his human rights. The Landlord served the N5 Notices to the Tenant due to Tenant smoking under his wife's bedroom, which resulted in the smell of smoke coming into their unit which was unacceptable as his wife has asthma. I do not find that the Landlord served N5 Notices for this reason is an infringement on the Tenant's rights, nor was it harassment.
37. The Tenant stated that they do not believe that the Landlord intends in good faith to reside in the unit and that the application should also be denied on the basis of the Landlord harassing the Tenant to vacate the rental unit. Section 83(3)(a) of the Act provides that:

83 (3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement; [Emphasis added]
38. Although the Landlord bears the onus to prove that they require the unit for their own use, where a tenant raises issues under subsection 83(3) of the Act, the tenant has the burden of proving their claim on a balance of probabilities.
39. The use of the word "serious" means that not every ongoing breach will lead to relief from eviction being mandatory. Rather the breaches complained of must be sufficiently egregious that refusal of a landlord's right to reclaim possession under the Act must be a reasonable result. As a result, the Tenants are not entitled to mandatory relief from eviction on the basis that the Landlords are in serious breach of their obligations. That being said, the Tenants may wish to pursue a remedy for these problems by filing an application with the Board.

40. After hearing the Tenant's claims and the evidence of both parties I am not satisfied, on a balance of probabilities that these issues rise to the level of seriousness under s.83(3) of the Act, which would result in mandatory relief of eviction. I heard all of the Tenant's submissions regarding the various emails that the Landlord's Legal Representative has sent either directly to him, or indirectly by sending them to individuals who are supporting him and have reviewed the various emails that were submitted into evidence. Although I note that these emails may have made the Tenant feel uncomfortable and may have been upsetting, I do not find, on a balance of probabilities that they constitute serious and continuing breaches of the Act, and do not rise to the level of "serious" so as to trigger mandatory refusal of eviction. I find it appropriate to note that this finding is limited to the purpose of s.83 of the Act and is not meant to preclude the Tenant from pursuing an application against the Landlord should they choose for any prior breaches of the Act that may have occurred.
41. I note that there is a difficult relationship between the Landlord and Tenant, a however I do not find that, on a balance of probabilities that the Landlord served the N12 Notice on the Tenant in bad faith due to any difficulties in that relationship. Overall, I find that the Tenant did not have evidence to contradict the Landlord's statements of good faith.
42. Having considered all of the evidence before me, I am satisfied on the balance of probabilities that the Landlord has demonstrate that he requires the unit for personal residential occupation for a minimum of one year.

Relief from Eviction: Section 83 considerations

43. The Tenant provided a significant amount of evidence throughout the hearing, and although it was heard, this order will only reference what I believe is relevant to the application before me.
44. I have considered the Tenant's submissions regarding his disabilities and limitations that he faces due to his chronic pain. I appreciate the Tenant is going through a difficult time, and considered the medical documentation that the Tenant submitted, however I find this documentation does not provide an adequate recent description of the Tenant's diagnosis or clarify the effect of any such a diagnosis on their ability to move, or when – in the opinion of a medical professional - they would be able to move (by analogy see *Wang v. Oloo, 2023 ONSC 10*). I considered the medical documents that the Tenant submitted, however I find this to be insufficient to demonstrate that they are unable to move due to their diagnosis. However, given the Tenant's circumstances, and considering their submissions that was supported by medical documentation regarding the impact a move will have on them – both physically and mentally -, I do find it appropriate to delay the eviction to permit the Tenant time to find an alternative rental unit and make the appropriate arrangements regarding his health care. I do not find this to be overly prejudicial to the Landlord, as his son currently has a place of residence to live, despite it not being an ideal living situation at the moment.
45. 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 postpone the eviction until May 31, 2026, pursuant to subsection 83(1)(b) of the Act.

It is ordered that:

1. The Tenancy between the Landlord and the Tenant is terminated. The Tenant must vacate the unit by May 31, 2026.
2. If the unit is not vacated on or before May 31, 2026, then starting June 1, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after June 1, 2026.

January 23, 2026
Date Issued

Nathalia Debski
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on November 1, 2026 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.