



**Order under Section 69
Residential Tenancies Act, 2006**

File Number: LTB-L-071746-24

In the matter of: BASEMENT, 354 BURNHAMTHORPE RD
ETOBICOKE ON M9B2A6

Between: ELFRIEDE SAMPOGNA Landlords
PASQUALE SAMPOGNA

And

JOSE LUIS ALFONSO Tenant

ELFRIEDE SAMPOGNA and PASQUALE SAMPOGNA (the 'Landlords') applied for an order to terminate the tenancy and evict JOSE LUIS ALFONSO (the 'Tenant') because:

- the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on August 21, 2025, and January 20, 2026.

The Landlords and the Landlord's Representative, Brenda Rizzo and the Tenant and the Tenant's Representative, Shaun Harvey attended the hearing.

On August 21, 2025, the Tenant's Representative raised a preliminary issue which was addressed in the Interim Order issued on this file. Accordingly, this order will not speak to the preliminary issues raised on August 21, 2025.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy shall be terminated pursuant to the terms of this order.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On August 20, 2024, the Landlord gave the Tenant an N12 notice of termination by mail, deemed served August 25, 2024, with the termination date of November 6, 2024. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlords.
4. The Landlord, Elfriede Sampogna (E.S.) testified that she owns the rental property with her husband and that they are the Landlords of the rental property.
5. The Landlords currently reside in a property in Brampton which is approximately 2,800.00 square feet, with an unfinished basement. The Landlord describes the maintenance of their current home to be very strenuous and demanding due to the overall size of the home that requires ongoing maintenance throughout the year.
6. The Landlords are in their mid to late 70's and find it more difficult to maintain the home in which they currently reside. E.S. testified that the Landlords are seeking vacant possession of the rental property for the purposes of downsizing their home and occupying the rental unit for the Landlord's own personal use and residential occupation for a period of no less than one year.
7. E.S. testified that the Landlords intend on occupying the entire home (main and lower level) which currently consists of two self-contained rental units, located on the main and lower levels of the rental property. The Landlords intend on doing renovations within the rental unit for the purposes of using the home as a single-family residence. The renovations include, but are not necessarily limited to, removal of the kitchen and bedroom walls to create a large open space recreational area in the lower-level rental unit.
8. On cross-examination, the Landlord confirmed that the basement unit is not currently being occupied by the Tenant and that the Landlord has not been charging any rent to the Tenant since July 2024.
9. E.S. confirmed that her current home is approximately 2,700 square feet with an unfinished basement. S.E. also confirmed that the rental unit was approximately 1,100.00 square feet plus a finished basement.
10. E.S. acknowledged that the main floor and lower units were self-contained but also argued that the main floor unit has a door which leads to the laundry area in the lower level. E.S. also submitted that the Landlords would be doing renovations to use the property as a single-family residence.
11. E.S. also confirmed that the Landlords have not applied for any permits that may be necessary to do the work that they intend on doing in the rental unit, nor have the Landlords obtained any quotes for the work that they intend on having done at the property.
12. E.S. testified that the Landlords will more than likely sell the property in which they are currently residing, but that decision has not been confirmed yet.
13. E.S. testified that she has had a hip replacement surgery and that she tries to minimize her travels up and down stairs. E.S. also testified that she does intend on using the basement unit as part of her home and will frequent the lower level when she needs to do so. E.S. also confirmed that her grandchildren visit her once a week.

14. E.S. also confirmed that the Tenant has not physically re-occupied the rental unit since the time of the flood that occurred in July 2024. E.S. also argued
15. On re-direct, E.S. testified that she was uncertain as to why the Tenant has not re-occupied the unit as he was informed that all the necessary repair work has been completed as of March 2025, and the Tenant was informed of this information through his legal representative.
16. E.S. also testified that the Landlords intend on removing the kitchen from the lower-level unit and multiple walls to create a large open space recreational area which the Landlords can use as part of their personal space. E.S. was unaware whether permits would be required to do this work but was prepared to deal with the issue as it came.
17. The Tenant, Jose Alfonso (J.A.), testified that he has not gone back to the rental unit since a flood occurred in July 2024, and the Landlord informed him that the unit was uninhabitable and required vacant possession to carry out the necessary repair work.
18. J.A. testified that the reason he has not returned to the unit is because he does not believe that the Landlords have carried out all the necessary repairs. He bases his belief on the fact that the Landlord's Representative did not respond to an email communication in which he asked for confirmation that all the work had been completed. The Tenant wanted proof that the repairs were completed, including the replacement of all existing cabinetry exposed to the flooding. The Tenant was not satisfied that the repairs were completed by the Landlords and chose not to return to the rental unit.
19. The Tenant acknowledged understanding his right to reoccupy the rental unit but insisted that he did not believe that the Landlords completed the necessary repair work and has not returned to the unit as of the date of the hearing.
20. The Tenant testified that he believes that the Landlords are trying to terminate his tenancy because his rent is well below market value and the Landlords simply want to re-rent the unit at market value rent, or alternatively sell the property. The Tenant also testified that the Landlords previously attempted to unsuccessfully sell the property approximately two years back.
21. The Tenant testified that since 2022, the Landlords have constantly told the Tenant that his rent is below market value and should be adjusted with an increase. The Tenant recalls the Landlords asking the Tenant for a rent increase in 2022, and 2023. The rent was not increased by the Landlords.
22. On Cross-examination, the Tenant confirmed that he has not moved back into the unit since July 2024, and that he did not recall when he was first notified that the unit was ready for the Tenant to reoccupy. The Landlord's Representative presented the Tenant with an email dated March 15, 2025, in which the Tenant was being informed that the rental unit was ready to reoccupy. I am mindful that the email was in fact sent to the Tenant's Representative and not the Tenant directly.
23. The Tenant testified that they informed the Landlords that they would not reoccupy the unit because of outstanding repairs. I am mindful that the Tenant did not return to the rental unit since the completion of the repair work by the Landlords.

24. The Tenant testified that he does intend on moving back into the rental unit once the repairs are completed by the Landlords.
25. The Tenant confirmed that he did not recall the amounts by which the Landlords attempted to increase his rent in the past. The Tenant did not provide any evidence to support this argument.
26. The Tenant has not been charged rent since vacating the rental unit at the time of the flood.
27. Based on the evidence, I am satisfied that the Landlords in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year. I am mindful of the Tenant's doubts of the Landlords occupying the property for their own personal use. I am also mindful of the Tenant's argument that the unit is not ready for the Tenant to reoccupy. I am also mindful of the Tenant's Representative's argument regarding the Landlord's use of the lower-level unit being temporary or rare at best due to their health issues and age.
28. I have not been presented with sufficient evidence to support that the Landlords are seeking termination of the tenancy for any other reason aside from the Landlord's genuine intent to occupy. With respect to the condition of the rental unit, I accept the Landlord's position of the unit being repaired and ready to reoccupy as of March 15, 2025. I make this finding because the Tenant has not been back to the unit since the time of the repairs being completed and has no direct knowledge of the state of the unit and whether the repairs have been completed or not. As far as temporary or minimal use of the lower level by the Landlords goes, I am satisfied that the Landlords intend on using the lower level of the property as an extension of the upper level, rendering it a single-family residence. I am also satisfied that the Landlords intend on using the lower level of the property as primarily a large recreation area intended to be used for large family gatherings, providing their grandchildren with a large play area, and using the space as a recreation area for the Landlords to enjoy and relax.
29. The Landlords have proven that they in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
30. The Landlords have compensated the Tenant an amount equal to one month's rent by November 6, 2024.
31. The Landlords collected a rent deposit of \$1,250.00 from the Tenant and this deposit is still being held by the Landlords. Interest on the rent deposit, in the amount of \$56.71 is owing to the Tenant for the period from February 1, 2024, to January 20, 2026.
32. Given that the Tenant has not been residing in the rental unit since July 2024, I do not find any reason to delay termination of this tenancy beyond that of a standard order.
33. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before February 8, 2026.
2. If the unit is not vacated on or before February 8, 2026, then starting February 9, 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 February 9, 2026.

January 28, 2026

Date Issued

Ilan Shingait

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 August 9, 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.