



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-018130-25

In the matter of: 2 Basement, 74 MARTINDALE RD
ST CATHARINES ON L2S2Y3

Between: Christian Kalb
Claudia Sandoval
Pedro Quijas
Tania Kotinkaduwa

Landlords

And

Graham Edward Malloch

Tenant

On March 3, 2025, Christian Kalb, Claudia Sandoval, Pedro Quijas and Tania Kotinkaduwa (the 'Landlords') applied for an order to terminate the tenancy and evict Graham Edward Malloch ('GEM' or 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. As part of the application, the Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date. (altogether, the L2 application)

This L2 application was heard by videoconference on February 3, 2026.

One of the Landlords, Christian Kalb ('CK'), the Landlords' Legal Representative, Deborah K. Shewman ('LLR'), the Tenant and the Tenant's Legal Representative, Siobhan Rocks ('TTR'), attended the hearing.

It is noted the Landlords filed a request to amend the L2 application on March 6, 2025, which only amended the Tenant's email address on page 6, as there was a one letter inadvertent error in the Tenant's email address that was listed in the original application. Neither party raised any issue with the request to amend, and so the L2 application, as amended, was heard on its merits.

It is also noted that an initial LTB hearing for this L2 application was held on July 17, 2025, but was adjourned on the Tenant's legal representative's request because of portal access issues in advance of that hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the L2 application. Therefore, a termination of the tenancy is to be ordered, postponed until March 31, 2026.

2. The Tenant was in possession of the rental unit on the date the L2 application was filed and the tenancy is still an active one. The monthly rent is \$1,044.00 due of the first day of every month. The rental unit is a one bedroom unit, with one bathroom and has an exterior, separate staircase to the unit's door.
3. N12 Notice of Termination:- On February 21, 2025, the Landlords mailed the Tenant by regular post an N12 notice of termination, which is deemed served on February 26, 2025. The termination date in the N12 notice was April 30, 2025. The Landlords claim that one of the Landlords, that is CK, requires vacant possession of the rental unit for the purpose of his own residential occupation.

Testimonies/evidence- summary

4. I was led to understand the Tenant has been in the tenancy since August 2018 and the Landlords acquired the rental unit building in January 2017.
5. The L2 application appeared on its face to be in good order, as a signed declaration of CK dated January 30, 2025 was filed alongside the L2 application on March 3, 2025. CK's declaration sets out the reasons for his need to move in, and he affirms he will live in the rental unit for at least one year. There were actually four declarations submitted on March 3, 2025- the other three were from the other co-Landlords, each of them declaring separately they agree with CK taking possession of the rental unit for his personal residence for at least one year.
6. CK testified that he is self-employed (manages a number of building rentals) and due to his separation from his ex-spouse, now lives in Waterloo, Ontario. He testified he would like to move into the rental unit that is closer to the properties he manages for at least one year and stated the rental unit is just right (location, size) for his personal living purposes. He explained that he has visitation rights for his two daughters, and while one lives outside of Canada, the other daughter will be able to stay with him for the permitted times allowed him.
7. CK testified that the requisite, statutory one-month compensation of \$1,044.00 was paid to the Tenant by way of a money order dated February 5, 2025 and mailed to the Tenant on March 4, 2025 (exhibit LL#1-copy of money order, and receipt when Canada Post posted the mailing).
8. CK mentioned there were two other N12 notices previously served on the Tenant, as disclosed in the L2 application. He explained that due to 'technical' errors in those two prior notices, he had to prepare and issue a third one, the correct one, which is the basis of this L2 application.
9. During cross-examination, CK testified the upstairs unit (which is an AirBnB unit) of the rental unit building is too large for his needs and would be too cost-impacting on him if he were to move there. As for the other Niagara region properties, he testified they are all occupied/active tenancies, or in some cases, he does not own the properties (he only manages them) so he cannot take possession of them.
10. CK identified a July 31, 2024 email he sent GEM (exhibit TT#1) and explained at the time of that email, his separation had happened and he was hoping to have both of his

daughters move in with him. At that time, he believed both daughters would have enough room to live with him in the rental unit. However, CK stated that as it turned out, only one daughter may sleep over during the visitation time he is afforded.

11. CK was questioned about whether he was aware of the Short-Term Rental Accommodation (SRTA) bylaws, to which he replied, "yes". He was shown exhibit TT#2, which was a small selected excerpt of St. Catherine's SRTA bylaws and CK addressed the requirement for the owner have the SRTA unit as his/her primary residence. He emphasized the upstairs unit (the AirBnB unit) will not be his primary residence, as he only wants to live in the rental unit, which is a separate and residential tenanted unit. Further, CK stated he and the three other co-Landlords are not sure about the future of the upstairs unit, but that is a separate matter for them all to decide on.
12. CK was shown a June 17, 2024 text exchange with GEM (exhibit TT#3) and he explained the light switch issue and smoke detector inspection were not connected to any reno work done upstairs. He confirmed the electrical panel for hydro service is located in the upstairs unit, so the light switch issue had nothing to do with the building's service.
13. CK confirmed he never offered the upstairs unit to GEM to live in, and qualified his answer by saying GEM never asked him if the upstairs unit could be available.
14. CK identified an AirBnB advertisement for the upstairs unit (exhibit TT#4) and confirmed it is a "mid-term rental" (i.e. 28 nights+). He was shown another two-bedroom AirBnB advertisement but he testified he only manages that property and does not own it. CK testified he only has ownership of one other AirBnB property, which is also a 3-bedroom property.
15. CK was shown an undated "Additional rules" posting (exhibit TT#5) and was asked whether he was trying all along to hide the fact that he has/had AirBnB rentals at the rental unit building. He denied this allegation, stating that the posting was not a "live" posting and was part of a private discussion "a few years ago".
16. GEM testified that his understanding of the St. Catherine's STRA bylaws is that the owner must have the AirBnB residence as his/her own primary residence, and he believes CK only wants to live in the rental unit in an effort to legitimize what GEM considers an illegal AirBnB unit upstairs. He referred to exhibits TT#2 and TT#5 for support of his stated belief. GEM posited that CK can find more appropriately sized accommodations in another unit that CK may own.
17. GEM stated that from during and after the upstairs was converted to an AirBnB unit, it has affected his enjoyment of his tenancy in the rental unit. He cited issues he had with noise and unit temperature in June and July 2024, which resulted from the renovations the Landlords had done upstairs to make it into the AirBnB unit it currently is. This was just before the first N12 notice was served on GEM (in late July 2024), he noted. He also cited the temperature controls are all upstairs and when there were residential tenants there, he could easily work with them on controlling the temperature for his rental unit.
18. During cross-examination and redirect, GEM confirmed that he filed tenant-rights (T2) and maintenance (T6) applications with the LTB. Those applications are to be scheduled before the LTB and contain allegations, *inter alia*, relating to temperature, parking and

trespassers. These T2/T6 were filed together, he said, by his previously hired paralegal. GEM confirmed that he relayed all of his T2 and T6 claims to that paralegal, but never communicated those issues to the Landlords as he had expected the paralegal would do all that. GEM said his paralegal advised him not to communicate any of these claims to the Landlords, save one relating to a refrigerator. He stated that because of problems he had with his paralegal, GEM let that person go, and later hired TTR for all case files.

19. GEM confirmed that he did notify the Landlords directly about a refrigerator problem – due to electrical breakers tripping in the upstairs unit, his fridge stopped working and needed immediate attention. GEM also confirmed that the Landlords acted promptly and effectively to resolve that issue.
20. GEM testified he has made some effort to find another place to live, citing a realtor website and stating generally, he has visited other websites for rental accommodations. GEM works in the area and would want to remain living in the area, but affordable units are not readily to be had.

Analysis

21. Having considered the hearing submissions of both parties, I find that on a balance of probabilities, the Landlords have established that the Landlord CK (C. Kalb) has a good faith intention that he will live full time in the rental unit as his residential premises for at least one year.
22. It is evident to me that CK's change to his marital status was the most likely reason for his wanting to move into the rental unit. CK manages a number of rental units, but unlike most of the other units, this one he co-owns and so has a right under the *Residential Tenancies Act, 2006* (the 'Act') to seek an LTB order allowing him to live there.
23. Both parties agreed that there were two previous N12 notices, but I accept that those previous notices contained technical errors, which required the Landlords to issue a third N12, which is the one under this L2 application. The timing of the first N12 appears to line up with CK's marital problems and from the end of July 2024 onwards, I find that CK has not stopped pursuing his intention to move into the rental unit. This also means that GEM has known about CK's intentions for the same period of time.
24. I considered GEM's submissions about his belief that CK simply wants to move into the rental unit to legitimize the upstairs AirBnB business with the City. The short excerpt presented in TT#2 states that any STRA unit must be the primary residence of the owner in order for it to become licenced by the City. It is clear to me that the rental unit building contains two separate rental units, that is, the rental unit at bar (the basement unit) and the upstairs unit (the AirBnB unit). As I see it, to "legitimize" the upstairs unit for a STRA licence before the City, the Landlords (one or more of them) would need to be living in the upstairs unit as their primary residence. Here, CK was quite clear (and held up to cross-examination) that he only wants to live in the rental unit (basement unit), leaving any issue with the upstairs unit to all four co-Landlords to decide upon. From this, it seems to me that living in the rental unit below will not "cure" or help to "legitimize" the illegality that GEM has suggested/argued exists upstairs in the AirBnB unit. I stop short of making a final determination on this point as I was not given the full set of City STRA bylaws to consider; I was only given a snippet.

25. In any event, I was not persuaded on a balance of probabilities by GEM's submissions that CK or the Landlords have any ulterior motive to evict GEM. I find that I was more persuaded by CK as his declaration and submissions were quite consistent, frank and in my view credible.
26. Further, GEM confirmed that there were no other tenancy issues that he notified or complained to the Landlords about, that were not properly attended to by the Landlords. He said that he only complained about a refrigerator problem the one time, and the Landlords responded timely and effectively. I accept that GEM said he had been advised by his previous paralegal not to complain about anything to the Landlords but that cannot be held over the Landlords at this L2 hearing.
27. I also note that this tenancy goes back to August 2018 and nothing was presented at this hearing, from that timeframe onwards, to suggest the Landlords had been acting unduly, once or in a pattern of actions, over the tenancy – at least for contextual purposes to support any section 83 claim that GEM wanted considered for the dismissal of the application.
28. Case law has established that the “good faith” requirement in section 48 of the Act means that the intended person genuinely intends to occupy the rental unit. My finding of good faith here is consistent with case law.
29. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario 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”.
30. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the issue under subsection 51(1) of the Tenant Protection Act, 1997, S.O. 1997, c. 24. The court referred to Feeney, supra, and held that:

“...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA.”
31. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, 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.”
32. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until March 31, 2026, pursuant to subsection 83(1)(b) of the Act. If the Tenant is able to move out earlier, I am including in the order below an ability for the Tenant to terminate the tenancy with a minimum of 10-days’ written notice to the Landlords.

33. Daily compensation, rent deposit:- The Tenant was required to pay the Landlords \$9,575.28 in daily compensation for use and occupation of the rental unit for the 279-day period from May 1, 2025 (the day after the N12 termination date) to February 3, 2026 (the date of this hearing).
34. Based on the monthly rent, the daily compensation is \$34.32. This amount is calculated as follows: $\$1,044.00 \times 12$, divided by 365 days.
35. The Landlords collected a rent deposit of \$1,044.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$143.82 is owing to the Tenant for the period from August 1, 2018 (start of the tenancy) to February 3, 2026 (date of this hearing).
36. The amount of the rent deposit and interest on the rent deposit is applied to the amount the Tenant is required to pay. That means the total daily compensation owing from the Tenant to the Landlords for the May 1, 2025 to February 3, 2026 period is \$8,387.46.
37. It is understood that the Tenant has been paying rents all along and arrears of rent, if any, are not part of this L2 application. The parties are left to calculate a final account of rents charged and rents paid up to the end of the tenancy as ordered below, which will undoubtedly modify the net amount of compensation showing in paragraph 36 above.

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 March 31, 2026.
2. If the rental unit is not vacated on or before March 31, 2026, then starting April 1, 2026, the Landlords 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 rental unit to the Landlords on or after April 1, 2026.
4. The Tenant may terminate the tenancy at any time before March 31, 2026 on the condition that the Tenant gives the Landlords written notice at least ten (10) days prior to the date the Tenant intends to vacate the rental unit, and thereby terminate the tenancy
5. The Tenant shall pay to the Landlords \$9,575.28, which represents compensation for the use of the rental unit from May 1, 2025 to February 3, 2026.
6. The Tenant shall also pay the Landlords compensation of \$34.32 per day for the use of the unit starting February 4, 2026 until the date the Tenant actually moves out of the rental unit.
7. The Landlord owes \$1,187.82 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
8. The total amount the Tenant must pay the Landlords is \$8,387.46.

9. If the Tenant does not pay the Landlords the full amount owing on or before March 31, 2026, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2026 at 4.00% annually on the balance outstanding.

February 20, 2026

Date Issued

Alex Brkic

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 October 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.