



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

**Citation:** SMITH v KOVACS, 2026 ONLTB 17236

**Date:** 2026-03-02

**File Number:** LTB-L-087102-25

**In the matter of:** 16, 125 BONAVENTURE DR  
HAMILTON ON L9C5Y9

**Between:** TYLER ALEXANDER SMITH Landlord  
LINDA ANN SMITH

**And**

MICHELLE KOVACS Tenant

When the capitalized word “Landlord” is used in this order, it refers to all persons or companies identified as a Landlord at the top of the order. When the capitalized word “Tenant” is used in this order, it refers to all persons identified as a Tenant at the top of the order.

TYLER ALEXANDER SMITH and LINDA ANN SMITH (the 'Landlord') applied for an order to terminate the tenancy and evict MICHELLE KOVACS (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 January 28, 2026.

The Landlord’s legal representative Berkan Altun, the second name Landlord, the Landlord’s son/ witness Matthew Smith and the Tenant attended the 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 application. Therefore, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 13, 2026.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On October 8, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of December 13, 2025. The Landlords are a mother and son team, they claim that they require vacant possession of the rental unit for the purpose of residential occupation by their brother/ son, Matthew Smith.

*Landlords' evidence*

4. The Landlords submit that the L2 application has been brought in good faith, that there is a genuine intention for her son to occupy the rental unit, live there for a time beyond one year and requested that the tenancy be terminated as soon as possible.
5. It was not disputed that prior to the service of the current N12 notice, the Landlords were contemplating the sale of the property, with a listing date of on about June 15, 2025. Due to market conditions and inability to sell, it was submitted that the property was taken off the market. Additionally, that while the part owner of the rental unit, the other Landlord, Tyler Smith was initially going to move into the rental unit, he was transferred out of the area. The plans were amended.
6. The Landlords' witness, son Matthew Smith (MS) testified that he is currently residing with parents at his family home with his girlfriend. He intends to move into the rental unit along with his girlfriend for an indefinite period of time, that is he has no plans for moving out. That based on his hours of work, working a continental shift commencing at 6 p.m. and ending at 6:00 a.m. his schedule differs from his parents and his brother's schedule. That the family home feels overly crowded with the comings and going of multiple adults, that his father has recently retired and is around a lot more, and that his brothers girlfriend is frequently staying over on weekends.
7. Further, (MS) testified that he is currently working in Hamilton and that the unit location will place him closer distance to the rental unit. And that his girlfriend will be graduating from Brock University in April 2026, her workplace practicum is also located in Hamilton. The ability to move in together will assist them in moving towards the next steps in their 7 year relationship.
8. The Landlord has compensated the Tenant an amount equal to one month's rent by December 13, 2025.

*Tenant's evidence*

9. The Tenant submitted that she questions the Landlords' good faith intentions as the plans have been amended many times. Commencing with the Landlord attempting to sell the property while not taking any steps to make the place "listing ready" and asking her to sign an N11 notice to vacate. As well as suggesting that the Landlord Linda Smith has suggested to her that she was paying below market rent.
10. And while Tenant believes (MS) will move into the rental unit, that he was coerced into doing so, and that he has never been in the rental unit to see it. That the attempted services of the N11 and N12 notices are classic moves in an attempt to get a tenant to move out.

### Analysis

11. On an application as before the Board, the onus is on the Landlords to establish that they, in good faith, require the rental unit for the purpose of their own residential occupation and that they genuinely intend to move into the rental unit for at least one year.
12. The courts have provided guidance to the Board in interpreting the “good faith” and “genuine intent” requirement in the context of a landlord seeking possession of a rental unit for the purpose of their own residential occupation.
13. 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”.
14. 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.
15. (MS) testified in a straight-forward and candid manner, affirming that he will reside in the rental unit for a period of one year or more as he had outlined in the declaration as filed with the Board.
16. The Tenant submitted that she believes (MS) will move into the rental unit while being suspect of the way this decision was arrived at.
17. The Landlord present at the hearing, Mrs. Smith testified that she has since paid off the mortgage on the rental property and did so with the intent for helping her son and in support of his independence.
18. Based on the evidence and submissions as provided, I find that the Landlords in good faith require possession of the rental unit for the purpose of their brother’s/son’s residential occupation for a period of at least one year.

### Compensation

19. The Tenant was required to pay the Landlord \$3,036.92 in daily compensation for use and occupation of the rental unit for the period from December 14, 2025 to January 28, 2026, less all amounts paid.
20. Based on the monthly rent, the daily compensation is \$66.02. This amount is calculated as follows: \$2,008.00 x 12, divided by 365 days.
21. The Landlord collected a rent deposit of \$1,890.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$242.00 is owing to the Tenant for the period from March 4, 2019 to January 28, 2026.

22. Where the tenancy is terminated the last month's rent deposit is to be applied to the last month of tenancy.
23. As I am satisfied that (MS) genuinely intends to occupy the rental unit for his own residential occupation for at least one year, the next issue before me is whether it would be unfair in all of the circumstances to delay or deny eviction. For the following reasons, I find that it would be appropriate to exercise discretionary relief pursuant to section 83 of the *Act*.

*Section 83 considerations*

24. The Tenant submitted that she has resided in the rental unit since 2019, and that the unit is located close to her sister's house. As she is a PSW, she provides certain care services for her 89-year-old mother that resides with her sister. Based on the rental conditions she suggested she would need consideration of four months delay to find alternative housing for herself and her cat. Additionally, that she has many friends in the area and feels lost at the thought of having to move out of the neighbourhood.
25. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'). Balancing the interests of the parties', in recognition that the Tenant may experience some difficulties in finding alternative housing if electing to stay in the same geographic area, I find that it would not be unfair to postpone the eviction until April 13, 2026 pursuant to subsection 83(1)(b) of the Act.
26. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 13, 2026.
2. If the unit is not vacated on or before April 13, 2026, then starting April 14, 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 April 14, 2026.
4. The Tenant shall pay to the Landlord \$3,036.92, which represents compensation for the use of the unit from December 14, 2025 to January 28, 2026, less all amounts paid.
5. The Tenant shall also pay the Landlord compensation of \$66.02 per day for the use of the unit starting January 29, 2026 until the date the Tenant moves out of the unit.

**March 2, 2026**  
**Date Issued**

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Alicia Johnson  
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 14, 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.