



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

File Number: LTB-L-053536-25

In the matter of: 1, 217 DUNDURN ST S
HAMILTON ON L8P4K6

Between: Clara Massara
David Bertolo
Nina Bertolo
Bertolo Elio
Landlord

And

Cheryl Nacha
Scott Gibb
Tenant

Clara Massara, David Bertolo, Nina Bertolo and Bertolo Elio (the 'Landlord') applied for an order to terminate the tenancy and evict Cheryl Nacha and Scott Gibb (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 23, 2026.

The Landlord, C. Massara and the Landlord's legal representative, J. Ponzo and the Tenants and the Tenant's legal representative, K. Staats attended the hearing.

A. Massara and D. Massara testified on behalf of the Landlord.

Determinations:

Preliminary issue-Non-Disclosure of Other N12 Notices of Termination

1. The Tenant's legal representative submits that the Landlord failed to disclose on their application other N12 notices served during the two year period prior to filing this application. The Landlord served an N12 notice of termination to another unit in the residential complex at the same time the Tenant's were served, yet it is not indicated on the application.

2. The Tenant's legal representative submits that the Landlord's application should be dismissed as the Landlord failed to comply with subsections 71.1 (3) and (4).
3. The Landlord's legal representative submits that because the applications were being filed simultaneously, she was not aware that she had to disclose the N12's on each other's application as they were served at the same time, to different Tenants.
4. Subsections 71.1 (3) and (4) of the *Residential Tenancies Act*, 2006 says:

Previous use of notices under s. 48, 49 or 50

(3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act*, 2020 comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

(a) indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and

(b) set out, with respect to each previous notice described in clause (a),

(i) the date the notice was given,

(ii) the address of the rental unit in respect of which the notice was given,

(iii) the identity of the intended occupant in respect of whom the notice was given if the notice was given under section 48 or 49, and

(iv) such other information as may be required by the Rules. 2020, c. 16, Sched. 4, s. 11 (2).

Non-compliance with subs. (3)

(4) The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3). 2020, c. 16, Sched. 4, s. 11 (2).

5. Pursuant to *Miller Estate v. Arguelles*, 2025 ONSC 112 (CanLII), I have the discretion to allow the Landlord to amend the application to include the required list of prior notices of termination. See paragraphs 23-36.
6. As the Tenant was aware of the N12 notice that was given to the other Tenant, this Tenant is not prejudice by the nondisclosure in the application.
7. I decline to dismiss the application on this basis.

L2 application

8. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of July 31, 2026.
9. The Tenant was in possession of the rental unit on the date the application was filed.

10. On April 4, 2025, the Landlord gave the Tenant an N12 notice of termination with a termination date of June 30, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by their child.
11. There is no dispute that the Landlord gave the Tenant compensation as required by the Act.

Landlord's evidence

12. C. Massara testified that she is one of the owners of the property, along with her parents and her brother. She testified that the complex consists of 2 units and a shared laundry area in the basement. She testified that she was added to the title in November 2023, after her brother suffered a stroke in October 2023. She testified that she took over the responsibility of the rental property at that time. Her parents are elderly and could not manage the responsibilities. Eventually, she hired a property management company to handle the property.
13. C. Massara testified that she requires the property for her daughters. She testified that her daughters require the space because they have outgrown the family home. There are 5 adults living together sharing one bathroom. She testified that there is no quiet space for them to study or work from home. She testified that her daughters have never lived on their own away from family and they want to live together.
14. C. Massara testified that she owns another property with her sister, however, her sister wants to maintain it as a rental. She testified that she feels like she is on the way all the time in her home because there is no space.
15. C. Massara testified that they have plans to convert the unit back to a single-family dwelling and her daughters will live together. She testified that no contractors have been hired as of yet as termination of the tenancy has not been finalized.
16. A. Massara testified on behalf of the Landlord. She is one of the Landlord's daughters. She testified that she currently resides in her childhood home with her family. She testified that she is a nurse and works at Sick Kids Hospital. She is in school to obtain her NP. She testified that she expressed interest in the rental unit when she started thinking about furthering her education. She applied for her program and got accepted in March 2025 to start in September 2025.
17. A. Massara testified that living at home is problematic in various ways. She testified that she is on a different schedule than her family and is often sleeping when the house is awake. She testified that there is no designated quiet space to study, and she is often interrupted by people coming and going. She testified that she craves independence, but cannot afford rent, so moving into the rental unit is ideal because she will only be responsible for utilities. She testified that the rental unit is a good fit because her father got transferred to work in Hamilton so there is comfort in knowing that someone is close during the day.
18. A. Massara testified that the difference in her commute to work from where she is now and the rental unit is minimal because she commutes during off hours. She testified that her NP program is online.

19. D. Massara testified on behalf of the Landlord. She is one of the Landlord's daughters. She testified that she is currently living at home with her parents and siblings. She testified that she requires the rental unit because her family home offers little to no privacy. She testified that she had discussions with her sister about moving out, and when her sister got accepted to her program, it solidified their decision. She testified that living in Hamilton will be convenient for her because she currently commutes to Mississauga and Hamilton for work. She testified that moving into the rental unit presents a chance to gain her independence while having her sister living with her will provide comfort.
20. D. Massara testified that living in the family home is stressful. She testified that there is little space and when she is able to work from home, it is very challenging. She testified that she is expected to be in the office 4 days a week. She testified that living in Hamilton and having an office in Hamilton will offer more of a work life balance.

Tenant's evidence

21. The Tenant testified that the N12 notice was given as a result of refusing a rent increase. The Tenant testified that she refused to pay an above guideline increase on October 6, 2022. As a result of this, the Tenant disputes the Landlord's intention for their daughters to move into the rental unit.

Analysis

22. Section 48(1) requires that, in order to be successful in this application, the Landlord has the onus to satisfy me that at the time of the service of the N12 Notice, he required, in good faith, the unit for residential use.
23. The relevant case law is clear that the test of good faith is genuine intention to occupy the residential unit (*Feeney v. Noble* (1994), 19, O.R. (3d) (Div. Ct.) ("Feeney"). As confirmed in subsequent decisions (*Salter v. Beljinac* 2001 CanLII 30231 (ONSC DC) ("Salter"), this legal test remains unchanged under the successor legislation (see *Salter*, para. 25 and 26).
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) ("Fava").
25. Based on the evidence before me, I am satisfied, on a balance of probabilities, that the Landlord, in good faith, requires possession of the rental unit for the purpose of their children's residential occupation for a period of at least one year.
26. I accept the Landlord's testimony that she requires the unit for her adult daughters. A and D Massara both testified that living in the family home was becoming quite stressful given that it was crowded and offered little privacy or quiet space. It is not unusual for adult children to desire independence. I am persuaded by their testimony that they intend to move into the rental unit and reside there for at least one year.

Relief from eviction

27. The Tenant submits that pursuant to subsection 83 (3) (c), eviction should be refused, as they were serviced with the N12 as a result of refusing a rent increase.
28. Subsection 83 (3) (c) says that the Board shall refuse an application for eviction where the reason for the application being brought is that the Tenant has attempted to secure or enforce their legal rights.
29. The Tenant testified that she refused a rent increase in October 2022. The N12 that was given to the Tenant subject to this application was given in April 2025. I am not satisfied that a refusal to pay a rent increase in 2022 was the reason for the application being brought almost 3 years later in 2025.
30. The Tenant testified that they have lived in the rental unit for 20 years. She testified that she has multiple medical issues, including Multiple Sclerosis and vision degeneration. Her her source of income is CPP-D. She testified that her husband is self employed. She testified that they have financial issues and sometimes deal with food insecurity. She testified that her neighbours are a great source of support.
31. The Tenant testified that she would require at least 6 months to find a new place to live, given her medical and financial issues. She testified that she has a large dog and that adds to the difficulty finding a place. She testified that she has sent messages to every place within her price range and does not receive any positive replies.
32. The Landlord is requesting termination of the tenancy and submits that 6 months is a reasonable timeframe.
33. The Tenant made submissions with respect to the change of ownership being not at arms length and only done as a means to serve the N12 notice. I reject the Tenant's submissions. I say this because the testimony establishes that the reason C. Massara was added to the title in November 2023 was because her brother had a stroke and was no longer able to be responsible for the property. Discussions about her daughters moving into the unit commenced a year after that, when A. Massara decided to pursue her Nurse Practitioner degree. I am not satisfied that there is a causal connection between the two events.
34. 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 July 31, 2026 pursuant to subsection 83(1)(b) of the Act. Given the length of the tenancy and the Tenant's medical issues, as well as the Landlord's acceptance of a delayed termination, July 31, 2026, is reasonable.

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 July 31, 2026.
2. If the unit is not vacated on or before July 31, 2026, then starting August 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 August 1, 2026.

March 18, 2026
Date Issued

Emily Robb
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 February 1, 2027 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.