



Order under Section 69 Residential Tenancies Act, 2006

Citation: Colacci v Black, 2026 ONLTB 19175

Date: 2026-03-16

File Number: LTB-L-104861-25

In the matter of: 2, 5 ALLENBY AVE
ETOBICOKE ON M9W1S5

Between: Angelo Colacci Landlord
Antonio Colacci
Franco Brandolino

And

Janice Black Tenant

Angelo Colacci, Antonio Colacci and Franco Brandolino (the 'Landlord') applied for an order to terminate the tenancy and evict Janice Black (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.

This application was heard by videoconference on January 15, 2026.

The Landlord's agent, Nick Brandolino ('NB'), and the Tenant attended the hearing. The Landlord was represented by John Bianchi. The Tenant was assisted by her son, Kevin Black.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed. In the alternative, I would deny eviction pursuant to s. 83(1)(a) of the *Residential Tenancies Act, 2006* (the 'Act').
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. The Landlord's only witness was Nick Brandolino – the Landlord's property manager. He testified about the service of the N12 notice.
4. On December 11, 2025, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 1, 2026. The Landlord claims that they require vacant

possession of the rental unit for the purpose of residential occupation by the Landlord's son, David Colacci.

5. NB provided hearsay evidence about the Landlord's son's intentions based on leading questions from the Landlord's representative. He claims that the Landlord's son resides in Woodbridge and wishes to move into the rental unit to establish his own household. He believes that the Landlord's son in good faith requires the rental unit for the purposes of residential occupation.
6. The Landlord did not attend the hearing to testify.
7. The Landlord's son, David Colacci ('DC'), did not attend the hearing to testify.
8. The Landlord primarily relies on DC's sworn declaration found in the Tribunals Ontario Portal, document ID 7019230. In his declaration David Colacci states that he currently lives with his parents and wishes to establish his own household by moving into the rental unit. He intends to occupy the rental unit as his primary residence for at least 12 months as required by s. 48 of the Act.
9. I note that a sworn declaration by the person who intends to occupy the rental unit is a mandatory requirement under s. 72(1) of the Act. It is therefore a *necessary* requirement for this application to succeed. There is nothing in the Act to indicate that it was meant to be a *sufficient* to establish the Landlord's good faith.
10. The Tenant disputes the Landlord's good faith.
11. The Tenant cross-examined NB about the reason why the rental unit was chosen. NB had no first-hand knowledge to provide about the Landlord's reasons. His understanding was that DC, who is his cousin, chose the property because of its location near Islington and 401. The residential complex is close to the highway. The rental unit is only a couple of steps up. It provides an unobstructed view of the highway. I note that this was the first time I have ever heard someone describe an unobstructed view of the highway as a benefit. When asked about a different unit at the property, NB once again cited the view as the reason why DC prefers the rental unit over unit 3, which faces another building.
12. The Tenant's evidence was that the property has many issues and that the Tenant has complained about her living conditions. The Tenant does not believe DC intends to live at the rental unit. The Tenant pays less than market rent and has become a problem for the Landlord after she complained about leaks, floods and other issues. The Landlord blames her for many issues at the property and takes a long time to fix things.
13. The Landlord declined the opportunity to cross-examine the Tenant about her theory of the case regarding the Landlord's lack of good faith.
14. 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). I may also draw inferences about the Landlords' good faith from the Landlords' conduct and motives (*Fava v Harrison* 2104 ONSC 3352 (ONSCDC).

15. Parties presented two theories of the case. The Landlord's theory is not supported by direct testimony of the Landlord or direct testimony of DC who claims that he will reside at the rental unit. The Tenant did not have the opportunity to cross-examine the Landlord or DC. The Tenant provided testimony about issues at the rental unit that she believes to be the real reason why the Landlord served her an N12. This testimony was not challenged by cross-examination.
16. This is the Landlord's application, and they bear the burden of proof on a balance of probabilities. The Landlord argues that they filed a sworn declaration from the person who intends to occupy the rental unit and that the Tenant failed to provide any evidence that the Landlord is acting in bad faith or that the Landlord intends to re-rent the rental unit. I disagree. The Tenant provided credible testimony that provides an alternative explanation for the Landlord's actions. Further, even if the Tenant was unable to do so, this position would in my view place an undue the burden of proof on the Tenant. This would be especially unfair in cases such as this, where the people with firsthand knowledge of the Landlord's intentions chose not to testify and thus not make themselves available for cross-examination.
17. I find that the Landlord did not establish that it is more likely than not that the Landlord in good faith requires the rental unit for residential occupation. It is unclear why the Landlord's son wishes to move into the rental unit. It is hard to ascertain the extent to which his intention to move in, if he in fact intends to do so, is in good faith. The Landlord's only witness provided explanations that defy belief. It is not credible that someone would seriously consider an unobstructed view of the highway to be a major reason to make the rental unit his primary residence.
18. In the alternative, I would consider all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would be unfair to grant the Landlord's application pursuant to subsection 83(1)(a). Neither the Landlord nor DC attended the hearing to testify about their circumstances. It is unclear what impact, if any, denying eviction would have on them.
19. The Tenant is a 67-year-old pensioner. She was born in the neighbourhood and raised on this street. She took care of her parents at the rental unit. Her father has since passed away. She has lived at the rental unit for 17 years and has ties to the community. She believes the Tenant is singling her out. Her income is \$1,900 a month and her rent is just over \$1,000. She can barely afford her rent, groceries and other expenses, and would be unable to afford market rent if she were evicted. She believes this application to be retaliatory. She also believes that if DC moves in, he will vacate after 12 months and re-rent the unit at market rent of some \$3,000 a month. The Landlord did not cross-examine the Tenant and I found this testimony to be credible. It would be unfair to grant the Landlord's application and evict the Tenant in all of the circumstances.

It is ordered that:

1. The Landlord's application is dismissed.

March 16, 2026

Date Issued

Vladimir Nikitin

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.