



Order under Section 69 Residential Tenancies Act, 2006

Citation: BATROUKH v DAMOTA, 2026 ONLTB 23991

Date: 2026-03-20

File Number: LTB-L-108660-25

In the matter of: UPPER, 37 SKELTON BLVD
BRAMPTON ON L6V2S2

Between: Nidal Batroukh Landlord

And

Dianna Damota
Samantha Smalley
Jesse Smalley
Tenants

Nidal Batroukh (the 'Landlord') applied for an order to terminate the tenancy and evict Dianna Damota, Samantha Smalley and Jesse Smalley (the 'Tenants') 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 March 17, 2026.

The Landlord's Legal Representative, Charmaine Spiteri and the Landlord attended the hearing. A witness for the Landlord, Brent Gobeo also attended the hearing.

The Tenant, Dianna Damota attended the hearing and appeared on behalf of the other two Tenants and declined to speak to Tenant Duty Counsel prior to the hearing.

Preliminary Issue:

1. The Tenant raised a preliminary issue that the Landlord failed to disclose all previous notices on the L2 application.
2. The Landlord disclosed the following notices on the L2 application:
 - a) LTB-L-072581-24
 - b) LTB-L-032586-25
3. The Tenant asserts the Landlord did not disclose the following notices:

- a) LTB-L-062687-24, served to the Tenants on August 6, 2024
 - b) LTB-L-031679-22, served to the Tenants on May 22, 2022
 - c) LTB-L-015891-24, served to the Tenants on February 24, 2024
4. The Landlords L2 application was filed on December 28, 2025. The L2 application states that any N12 or N13 notices that were given in the past two years need to be disclosed.
 5. Therefore, I find that LTB-L-062687-24 and LTB-L-015891-24, should have been disclosed on the L2 application.
 6. The Landlord's Legal Representative asserts the Landlord had an unfortunate situation of having poor legal representation that resulted in several L2 applications that were either dismissed, or the Landlord had to withdraw due to errors on the application.
 7. She stated she had no reason as to why the two additional previous notices were not disclosed, other than she may not have been aware of them at the time the application was filed on December 28, 2025.
 8. The Tenant testified she was aware of these notices as they had been served upon her.
 9. Section 71.1(3) of the Act provides that a Landlord who files an application based on an N12 or N13 notice shall indicate whether the landlord has, within two years prior to filing the application, given any other N12 or N13 notice in respect of the same or a different unit and provide particulars of such notices. Subsection 71.1(4) says that the Board shall refuse to accept the application for filing if the landlord has not complied with the disclosure requirement.
 10. I find it appropriate to allow the Landlord to amend their application to include the two omitted previous N12 notices.
 11. In *Miller Estate v. Arguelles, 2025 ONSC 112*, the Tenant argued that the Board has no such discretion to allow the application to be amended and once the Board determines that the landlord has not complied with its obligations to disclose, the application must be dismissed.
 12. The Court rejected that argument and held the amendment was "appropriate", "did not prejudice the tenant" and there was no legal error.
 13. The Court explained the purpose of section 71.1(3) of the Act as follows:

[31] The provisions in question attempt to balance the good faith rights of a landlord to take occupation of a residential unit with the rights a tenant to be free from wrongful eviction.

[32] The required disclosure ensures tenants have at least some of the information necessary to legitimately question the landlord's good faith use of the s. 48 notice. That information may allow for further investigation by the tenant that reveals the

landlord has not acted in good faith on earlier occasions. It may allow the Board to infer that a landlord is not acting in good faith in the application before it.

14. The Court held that the consequence of a landlord failing to comply with the N12/N13 disclosure requirement in s. 71.1(3) is not to render the notice void, or to prohibit the landlord from bringing its application, or to dismiss the application. It is to refuse the filing of the application where there is an error on its face.
15. Once the application is accepted for filing, there is nothing that prohibits the LTB from amending the L2 to include additional notice information where there is no prejudice to the tenant. Rule 15.4 anticipates amendments to applications provided the amendment is appropriate, would not prejudice any party, and is consistent with a fair and expeditious proceeding.
16. In this case, the Tenants were the very persons who had been served with the undisclosed N12's and it was undisputed these notices were served on them, therefore, I do not find they were prejudiced by its omission from the L2 application.

Amending the Application:

17. The Landlord's application is amended to include the previous N12 notices for LTB-L-062687-24 and LTB-L-015891-24.

Determinations:

18. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy.
19. The Tenants were in possession of the rental unit on the date the application was filed.
20. There is no last month's rent deposit.
21. On December 23, 2025, the Landlord gave the Tenants an N12 notice of termination with the termination date of February 28, 2026. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.

Good Faith

22. The N12 was served pursuant to section 48 of the Residential Tenancies Act, 2006 (Act). Section 48(1) requires that, in order to be successful in this application, the Landlords must establish that at the time of the service of the N12 Notice, they required, in good faith, the unit for residential use.
23. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Court held that the test of good faith is whether the Landlord has a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. This principle was upheld in *Salter v. Beljinac* 2001 CanLII 40231 (ON SCDC) where the Court held that the "good faith" requirement simply means that the landlord sincerely intends to occupy the rental unit.

24. In the more recent case of Fava v. Harrison, 2014 ONSC 3352, the Divisional Court affirmed that the motives of the landlord in seeking possession of the unit are “largely irrelevant”, however the Board can consider the conduct and motives of the landlord to draw inferences as to whether the landlord desires, to occupy the property in good faith.

Landlord's Evidence

25. The Landlord testified that he requires his home for his own personal use as his and his wife's health is not great, and they cannot live in the basement and require more space to be able to live and have family over.
26. He testified he has served N12 notices in the past, however, due to incompetent legal representation the applications were dismissed for technical errors.
27. He testified he was originally living with his ex-wife in the lower unit.
28. He testified he got re married in November 2025.
29. He testified he is currently living in the lower level of the residential complex, which is a one bedroom, 1 bathroom unit. He testified the Tenants lives in the upper unit.
30. He testified after he became married and wanted to live in the entire home, he reached out to the Tenants and advised them and they told him to provide them proper notice and they would vacate, however that changed, and they did not have a great relationship.
31. He testified after his first marriage dissolved he went through heart surgery.
32. He testified he has children and grandchildren that cannot come and visit as he does not have room for them and feels like a prisoner in his own home.
33. He testified his wife has health issues as well and living in a basement is not the right environment.
34. He testified that he plans to move to the upper unit with is wife and have access to the entire home and has no plans of continuing to be a landlord.
35. He testified that there is an interior door inside the rental unit separating the upper and lower units, therefore, no renovations would be required for him to access the entire home.
36. He testified he has also been notified by the City of Brampton that they have received a complaint of an unregistered basement apartment at the residential complex.
37. He testified he had contacted a contractor at the time he got the letter form the City and it was determined that converting the lower unit into a legal apartment would be a minimum of \$50,000.00. He states he does not have the funds to make the lower-level rental unit legal.

38. On cross examination he testified that at one point he offered the Tenants that they could move to the lower level, however, that was before he was informed that the rental unit was an illegal unit and before he got re married.

Landlord's Witness-Brent Gobeo

39. Brent Gobeo testified that he is a By Law Enforcement Officer of Property Standards with the City of Brampton and he looks after complaints of private residences including illegal apartments.
40. He testified on March 20, 2024, he received a complaint that there was an unregistered basement apartment at the residential complex.
41. He testified he did not visit the property when the complaint came in and the procedure is that they conduct an online search to see if they can determine if there is an illegal apartment. They found an older advertisement from when the home was for sale, which showed two kitchens at the residential complex. He states this usually suggests a second unit.
42. He testified they sent a letter to the Landlord on March 20, 2024, and in part states they were aware there may be a violation due to an illegal basement apartment that had not been registered with the city, and the Landlord was to contact the city for an inspection. The letter also stated that a person who is convicted of a Zoning By-law offence may be liable for a fine of up to \$25,000.00. DOC 7046631.
43. He testified on July 23, 2025, he heard from the Landlord and required more time to respond to the letter, as he was having medical issues.
44. He testified there is still an open investigation, as he has not yet obtained access to see if there is a violation. The Landlord has not yet been fined as he has not gained access to the unit to obtain evidence of a second unit.
45. He testified the process for an illegal basement unit would be that the homeowner would have two options as follows:
- a) They could apply for a basement finished unit for personal use with no permits so it would still be considered illegal, and it could not be rented as a stand-alone unit and could only be rented as a single-family home.
 - b) They could apply for a second unit, hire an architect and follow the building and fire code, which he states could result in a complete demolition of the unit. If this process was concluded and approved, then they would get a certificate that the unit was legal and they could legally rent the unit.

Tenant's Evidence

46. The Tenant testified she received the first N12 sometime in 2021, that the Landlord required the upper unit, but he had no proof he planned to move into the unit.

47. She states she recalls seeing a rental ad for the entire residential complex, where the Landlord was looking to rent to an Arabic family for \$3,000.00 per month. However, she does not have a copy of this advertisement.
48. She testified sometime in 2021, the Landlord offered the Tenants to move to the lower unit, and he would move to the upper unit, as his ex-wife no longer wanted to reside in the lower unit.
49. She testified the Landlord is trying everything he can to evict them, and they have been served multiple N12 notices.
50. She believes the Landlord only served them the N12 so that he can rent out their unit for more money, or for him to move into the upper unit and then he will rent out the lower unit. However, states she has no evidence to substantiate this.

Analysis

51. I am persuaded by the Landlord's testimony and declaration that the Landlord genuinely intends to move into the rental unit for a minimum of one year as both himself and his wife have health issues and living in a basement is not the right environment for them. Also, the Landlord does not have any room in the one bedroom, one-bathroom rental unit to have his family over and requires the entire home for him and his wife's needs. I also accept the Landlord cannot afford to legally convert the lower rental unit to comply with the City of Brampton and has no intention of renting out the lower unit, and if he did could face fines of up to \$25,000.00 with the City of Brampton.

Compensation

52. Section 48.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the landlord, in good faith, requires the rental unit for the purpose of residential occupation. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, subsection 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 48.1 of the Act.
53. The Landlord testified the required one month's compensation was paid to the Tenants by waiving the lawful monthly rent owing on January 1, 2026. This was uncontested by the Tenant.

Relief from Eviction

54. The Tenant lives with her 30-year-old son and 28 year old daughter who are both on ODSP.
55. Her children have trouble physically, emotionally and mentally navigating the outside world.

56. The Tenant, Dianna Damota has had a heart attack, four strokes, suffers from angina, IBS and colitis.
57. The Tenant, Dianna Damota's income is ODSP and CPP disability.
58. Her children contribute to the rent payments with their ODSP payments.
59. The Tenants have been looking for a rental unit with a realtor and was able to locate some in their price range, however, they have been having difficulties as it appears that most Landlords do not want to rent to someone on disability.
60. They would like to move out of the rental unit but has not been successful finding a new place.
61. The Tenants will have challenges packing up their belongings as they are not physically able to do so and do not have a car.
62. 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 May 31, 2026, pursuant to subsection 83(1)(b) of the Act.
63. This will provide the Tenants additional time to find a new rental unit and obtain any services that they will require to facilitate a move based on their health conditions. While I appreciate that the Landlord would like to move to the upper unit and have access to the whole home as soon as possible so that he has more room to be able to live and have his family over, and not risk a \$25,000.00 fine with the City of Brampton, I find the Landlord still has a place to live in the interim and that he can provide a copy of this order to the City of Brampton.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before May 31, 2026.
2. If the unit is not vacated on or before May 31, 2026, then starting June 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 June 1, 2026.

March 20, 2026
Date Issued

Trish Carson

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.