



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-010841-24

In the matter of: 3, 27 GORE ST W
PERTH ON K7H2L9

Between: Marlene and Jim Horne Landlords

And

William Nelson Tenant

Marlene and Jim Horne (the 'Landlords') applied for an order to terminate the tenancy and evict William Nelson (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.

The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on March 3, 2026.

The Landlord, Marlene Horne, the Landlords' legal representative, Marie Conolly, the Landlords' witness, Austin Horne, the Tenant, and the Tenant's legal representative, Linda Tranter, attended the hearing. Marlene Horne will be referred to as the Landlord singular in the order below.

Determinations:

1. The application is dismissed because, while I am satisfied on a balance of probabilities that the Landlords in good faith require possession of the rental unit for the purpose of residential occupation for at least one year for their son, the disclosed circumstances support granting relief from eviction.

Facts and Evidence

2. On January 28, 2024, the Landlords gave the Tenant an N12 notice of termination with the termination date of March 31, 2024. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their son.

3. The residential complex is a three-story building consisting of seven units. The Landlords purchased the residential complex about 20 years ago to fund their retirement.
4. The Landlord testified that the Landlords require the rental unit for their 31 year old son, who resides with them in their home. The Landlord and her husband wish to retire and downsize. They are 68 and 71 years old. They wish to travel. They cannot downsize while their son is living at home with them. Their son does not have much money. He works part time as a cook. He should have a full-time job in 2027.
5. The Landlords intend for their son to move into the Tenant's rental unit. The monthly rent will be \$600.00. The Landlords' son will also assist his father with work at the residential complex. According to the Landlords, their son cannot afford to live anywhere else.
6. The Tenant disputed the Landlords' good faith in serving the notice of termination. According to the Tenant, the Landlords merely wished to get rid of him because his rent was too low.
7. The Tenant's rental unit is located on the second floor. The Tenant has been residing in the rental unit for over 30 years. His rent is \$416.00 per month.
8. There is another vacant unit in the residential complex that is currently being renovated. The Landlords offered this unit to the Tenant for \$1,350.00 per month, although they say the market rent is \$1,500.00. The Tenant declined the offer, as he cannot afford it.
9. After the Landlords gave the N12 notice of termination on January 28, 2024, the Tenant complained to the authorities about deficiencies in the rental unit, including significant disrepair, electrical safety and fire code violations. The Tenant made no complaints to the Landlords before he was served with the N12 notice of termination.
10. According to the Landlords, by the time of this hearing, that is two years later, the deficiencies were, for the most part, corrected and the rental unit will only require about 3-4 weeks of work and a deep clean before their son could move into the unit.
11. The photographs of the current state of the rental unit submitted by the Tenant showed disrepair and significant wear and tear in the rental unit, including, a broken window pans, cracks in the walls, peeling paint and uneven flooring.
12. The Landlords' son testified that he has not been in the rental unit for some time. He could not recall when he was there last. He said he was aware of the state of the rental unit; however, he could not recall seeing the broken window pane, cracks in the wall or the state of the bathroom. He wanted to move into the rental unit as soon as possible. He planned to live there for a year or more. His monthly income is currently about \$2,000.00 per month. He has poor credit, has bills and credit cards to pay off, and finds it too expensive to live on his own. As such, he resides with his parents in their 5-bedroom house in the country. He had lived with his sister previously. His sister now occupies another rental unit located in the residential complex.

13. The Landlords previously served an N12 notice of termination for another rental unit in the residential complex in January 2023 for the purposes of residential occupation for their daughter. The daughter had moved into the rental unit with her two small children and continues to reside in the rental unit.
14. When asked why he does not move into the renovated rental unit on the ground floor, the Landlords' son said that he could not afford the rental unit on the ground floor because his parents would not lower the rent enough for him to be able to afford the rental unit. He wants the Tenant's rental unit because it is cheap.

Good Faith Intention

15. The burden of proof is on the Landlords to establish on the balance of probabilities that they in good faith require possession of the rental unit for purposes of residential occupation for their son. After considering the evidence, I am satisfied for the reasons below, that the Landlords have met their burden.
16. The case law in this area establishes that the test is determined by considering the intention of the person named in the application, the Landlords' son. If that person genuinely intends to reside in the unit then the notice is given in good faith. The motivation of the Landlords choosing one unit over another is not relevant in and of itself. In accordance with the cases presented on behalf of the Tenant, however, evidence related to motive may be considered in determining whether the application is made in good faith; that is, in determining the Landlords' son genuine intent to reside in the unit.
17. The test of good faith is whether the Landlords' son has a genuine intention to occupy the rental unit for his own use (*Salter v Beljinac* [2001] O.J. No. 2792 *Div Ct). Although I must consider all the circumstances in assessing good faith, the reasonableness of a landlord's proposal to use the rental unit is not a consideration where I find there is good faith. (*Feeney v Noble*, [1994] O.J. No. 2049 (Div.Ct).
18. In *Fava v Harrison*, [2014] O.J. No. 2678 (Ont. Div. Ct.) the Divisional Court held that the Landlord's motive may be relevant: however, the true test is whether the Landlords in good faith require the possession of the rental unit for their son's residential occupation.
19. Based on the evidence before me, I am satisfied that the Landlords in good faith require possession of the rental unit for the purposes of residential occupation for their son. The Landlords wish to retire and downsize, and they cannot do this while their son resides in the family home. Although, the state of the Tenant's rental unit cast some doubt on my finding of the son's intention to move in a reside in the rental unit, on balance I am satisfied that he is ready to move out of his parents' home, and that he intends to reside on his own in the Tenant's unit in his parents' residential complex.
20. I also considered the fact that the Landlords' daughter resides in the residential complex and the Landlords' son had resided with her in her previous home.

21. I have also considered that the Landlords' motives are mostly financial and a matter of lifestyle and that there is another rental unit available in the residential complex; however these motives are not determinative in the finding of good faith, as set out in the cases above.

Section 83 considerations- relief from eviction

22. Subsection 83(1) of the Act states:

Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- (a) Refuse to grant the application unless satisfied having regard to all the circumstances, that it would be unfair to refuse; or
- (b) Order that the enforcement of the eviction order be postponed for a period of time.

23. According to section 83 of the Act, I am required to consider all the circumstances in this case including both parties' situations to determine if it would be appropriate to evoke section 83 relief.

The Tenant's circumstances

24. The Tenant is 85 years old. He has been living in the rental unit for 30 years, and in the neighbourhood for 40 years.
25. The Tenant has numerous health issues, including a broken back, leg pain, osteoporosis, and osteoarthritis. He has significantly restrained mobility. The Tenant requires morphine four times a day to deal with his pain. He also requires the use of a motor vehicle, as he cannot walk to the stores, and there is no public transportation in town. There is parking in front of the residential complex for his vehicle.
26. The Tenant's sole source of income is Old Age Pension and Guaranteed Income Supplement, about \$1,950.00 per month.
27. In addition to rent, the Tenant also has to pay for utilities, telephone and his car. He has no friends or family in the vicinity, who could assist him.
28. The Tenant resides in a small town and should he be evicted, there is essentially no prospect of him finding alternate accommodation considering the locality and the rent he has been paying.

The Landlords' circumstances

29. The Landlords wish to gain possession of the rental unit for their son because they wish to retire, downsize and enjoy their retirement. In order to do that, their son has to move out of

the family home. The Landlords chose the Tenant's rental unit for their son to move in because it is financially advantageous.

30. The Landlord stated that the Landlords would be devastated if they did not regain possession of the Tenant's rental unit for their son.
31. The Landlords have another vacant rental unit in the residential complex that is currently available; however, the Landlords do not want their son to move into that unit because the rent is higher. According to the Landlords, their son could not afford the rent and they do not want to lower the rent.

Analysis

32. It is understandable that the Landlords, for financial reasons, wish to provide the cheaper unit to their son. However, they have the option of making the other rental unit available to the son, although it would not be as financially advantageous. The Landlords and their son have options; the Tenant does not.
33. When I consider the totality of the factors that were disclosed at the hearing, I find that the unfairness to the Tenant of granting the application far outweighs the unfairness to the Landlord of denying the application. The Tenant would experience significant hardship if he was forced to move out of the rental unit. The evidence does not support that the Landlords will be similarly prejudiced if their application is not granted. The Divisional Court's decision in *Caputo v. Newberg*, 2009 CanLII 32908 (ON SCDC) allows me to consider the Landlord's options for other places to live as part of my analysis under section 83 of the Act.
34. To evict the Tenant from his home of 30 years, so that the Landlords' son could move in for a year or more is, in my view, patently unfair.
35. Accordingly, 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 grant relief from eviction pursuant to subsection 83(1) of the Act.

Return of the compensation

36. The parties agreed that the Landlords paid the Tenant compensation equal to one month's rent in the amount of \$360.00 pursuant to section 48.1 of the Act. In accordance with section 73.1 of the Act, the Tenant shall pay this money back to the Landlords because the application is not granted.

It is ordered that:

1. The application is dismissed.

2. The Tenant shall pay back the Landlords \$360.00 for the compensation he received under section 48.1 of the Act.
3. If the Tenant does not pay the Landlords the full amount owing on or before April 30, 2026, the Tenant will start to owe interest. This will be simple interest calculated from May 1, 2026 at 4.00% annually on the balance outstanding.

March 30, 2026

Date Issued

Jana Rozehnal

Member, Landlords 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.