



Order under Section 69 Residential Tenancies Act, 2006

Citation: Tran v Windler, 2026 ONLTB 24141

Date: 2026-04-02

File Number: LTB-L-005332-24

In the matter of: 1, 4185 Petrolia Line
PETROLIA ON N0N1R0

Between: Dieutin Tran Landlord
Patricia Tran

And

Nicholas Windler 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.

Dieutin Tran and Patricia Tran (the 'Landlord') applied for an order to terminate the tenancy and evict Nicholas Windler (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 October 20, 2025, November 21, 2025 and concluded on January 16, 2026.

The second named Landlord Patricia Tran, the Landlord’s legal representative George Brown, the Landlord’s witness Bibi Saleema Ali, Joe/ Dieutin Tran and Le Quyen Tran attended the hearing. The Tenant, and the Tenant’s legal representative Matthew Alexander attended the hearing. Krista Turnbull employee of Bluewater Power/ supported by Jessica Tracey, Corrine Nauta County of Lambton Manager of Building Services and Chris Babcock (CB) attended as witnesses for the Tenant.

Determinations:

Background

1. This is the second time that the Landlord has applied to terminate the Tenant's tenancy. The application as contained in LTB-L031993-23, order dated December 20, 2023 dismissed the Landlords L2 application, the N12 notice as served was on the basis that the Landlord's/ Patricia Tran's mother Bibi Saleema Ali intended to move into the unit. The first application was unsuccessful because the Landlords did not prove their case.
2. The application as before me concerns the same rental unit, however this application is for the purposes of Le Quyen Tran occupying the rental unit. She is the mother of Dieutin Tran.
3. It was outlined that two prior N12 notices with Le Quyen Tran being outlined as the intended occupant were withdrawn (LTB-L-055418-22) and (LTB-L-029144-23), these were notices in connection to rental unit #2.
4. The Tenant has received 3 notices in respect of rental unit #1, the first notice was served on June 22, 2022, and was withdrawn on April 12, 2023 (LTB-055462-22). The second that was dismissed and now the third as before the Board for determination. That through the issuance of the various notices the Landlord's have demonstrated bad faith and are misleading the Board.

Preliminary Issues

Motion to Dismiss

5. The Tenant's Representative raised the motion to dismiss as after LTB-L031993-23 was issued, while no request for review was filed, the Landlord's proceeded to issue the Tenant a new N12 notice, outlining Le Quyen Tran as the intended occupant of unit #1 at 4185 Petrolia Line Petrolia ON.
6. The argument being that as they were unsuccessful in the prior application in LTB-L-031993-23, they were attempting to re-litigate an issue that had already been decided in the first application as the matter involves the same parties, the same question had been decided and that the earlier decision was final.
7. The Landlords' representative submitted that clearly the application as before the Board is different in that the prior application involved the Landlord's/ Patricia Tran's mother Bibi Saleema Ali was dismissed. The subject of her occupancy of another rental unit in the same complex, unit #2 was granted in the Landlord's application in LTB-L005130-24.
8. The doctrines of *res judicata* and *issue estoppel* promote fairness and integrity in the justice system by ensuring finality of decisions. The test for *issue estoppel* was set out by

the Supreme Court in *Angle v. Minister of National Revenue*, [1974 CanLII 168 \(SCC\)](#), [1975] 2 S.C.R. 248 at p. 254:

- a. that the same question has been decided;
- b. that the judicial decision which is said to create the estoppel was final; and,
- c. that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised.

9. In *Danyluk v. Ainsworth Technologies Inc.*, [2001 SCC 44](#), [2001] 2 S.C.R. 460, the Court confirmed that the doctrine of issue estoppel applies to administrative tribunals.

10. At para. 33 of *Danyluk*, the Court stated that *issue estoppel* involves a two-step analysis:

The rules governing issue estoppel should not be mechanically applied.

The underlying purpose is to balance the public interest in the finality of litigation with the public interest in ensuring that justice is done on the facts of a particular case. (There are corresponding private interests.) The first step is to determine whether the moving party (in this case the respondent) has established the preconditions to the operation of issue estoppel set out by Dickson J. in *Angle*, supra. If successful, the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied. Emphasis added...

11. In this case, the Board has heard the prior application in LTB-L031993-23, it concerned a different party moving into the rental unit. And as underlined above, “the court must still determine whether, as a matter of discretion, issue estoppel ought to be applied.” In the case before me, while the unit of concern is the same, it involves a different family member.

12. Therefore, the Tenant’s motion to dismiss the application on this basis was dismissed. The matter proceeded to hearing the merits of the Landlords’ application.

L2 Application

13. As explained below, the Landlords have 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 30, 2026.

14. The Tenant was in possession of the rental unit on the date the application was filed.

15. On December 28, 2023, the Landlord gave the Tenant an N12 notice of termination with the termination date of February 29, 2024. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by “my spouses parent.”

16. The Landlord has compensated the Tenant an amount equal to one month's rent by February 29, 2024 by cheque sent on December 28, 2023. The Tenant did not cash this cheque, as such the Landlord will be ordered to meet the compensation requirement by reissuing payment before this order will be effective.

Landlord's evidence: Patricia Tran

17. The Landlord testified that:

- The property which consists of three rental units and 2 commercial units below was purchased in 2022.
- It is her plan to move into unit #3 with her own immediate family, husband and children.
- Her mother lived with them prior and has since moved into unit #2 on September 3, 2025;
- It was always their intent to live close to their parents and look after them, permitting grandparent closer connection to the grandchildren.
- Once their current family home sells they will be in a better financial position and pay less mortgage interest, owning the rental property and their home is posing an enormous stress on their household. The financial situation being exacerbated by the Tenant not paying rent.
- The home is currently listed for sale privately on advice of an agent but that it has not sold yet.
- Her mother-in-law Le Quyen Tran, if granted possession will occupy unit #1, her husband lives outside of country of 6 months of every year.
- There is no intention to charge her mother or mother in-law rent as the commercial rental units will offset the cost associated with the building, once the proceeds of the sale of their home is put towards payments.
- While they own two apartments across the street, these are 700 sq ft. in size and as the intent is to live together the units are not conducive for that purpose.
- When Le Quyen Tran immigrated, she left behind her husband and other children for work. That she would like to have this time together with them and the grandchildren to teach them her language (*Vietnamese*) and culture.
- That the unit is desired as there are not many homes available to support multigenerational living within the community.
- Regarding unit #3: that the kitchen will be converted to a third bedroom without any structural changes and plumbing would be capped.
- Unit #1 is in move in condition, that it will require painting and cleaning only.

Landlords witness testimony

18. Bibi Saleema Ali testified that:

- She moved into rental unit #2 on September 6, 2025.
- She lived in the basement rental unit of her daughters home prior and that she is now more comfortable.
- She has changed over all her government ID's to correspond with her new living location.

Tenant testimony

19. Nicholas Windler testified that:

- His rental unit is the largest of all three units.
- He is employed in construction and has resided at the rental unit for 12-14 years, the rent is \$735.00.
- He has been served a total of three (3) notices and that originally these were served with the intent of the Bibi Saleema Ali moving in.
- It is his belief that no one is residing in unit # 2 nor 3, that Bibi Ali has not been seen.
- Based on his suspicions the hydro meter was evidenced, he submitted that there does not seem to be any utility and that hot water was turned off to unit #2 prior by former tenant.
- Given the minor utility usage, not likely that anyone is residing there.
- Based on the changing stories of the Landlords, he believes the notice has not been issued in good faith and that there is a strong potential that the Landlords will turn the units into Airbnb's once renovated like they did with the two rental unit across the road.
- Since the last hearing date, he has seen Bibi Ali in the building but not prior to October 20, 2025 and that she had been making an effort to go out of the way to be seen and that the water heater was turned on for her unit.
- He requires a few months to move, definitely more than 60 days to take time off work and cover moving expenses
- It will be hard to find a place to live, the current unit is two minutes from his place of employment, proximity being key as he is an on-call worker.

20. Further, the Tenant submitted that while he has no direct evidence of bad faith, as the Board made that determination last time he is suspect given the change in plans. And that as the Landlords have a beautiful home in Sarnia, it is hard to believe their submissions about any issues of financial hardship or that they will move into the unit #3. That he has started to look for an alternate living arrangement but will wait for the Board to issue the decision.

21. Corrine Nauta County of Lambton Manager of Building Services testified that:

- There are no active permits for the residential complex.
- That there was a prior permit for unit #3 however was withdrawn on October 15, 2025.
- If no structural changes are being considered/ made no permit is required.

22. Krista Turnball employee of Bluewater Power testified about the interpretation of meter readings in connection to the hydro utility in the complex. She submitted that it is not likely that someone was residing in rental unit #2 on basis of the utility usage as measured in kilo watts but that she could not definitively confirm.

23. Chris Babcock the former tenant of unit #2 testified that:

- Prior to vacating on or about August 3, 2025, he called unit #2 his home for over 20 years.

- He turned off the hot water to the tank prior to his departure.
- He has not gone by the property to see if anyone was residing there but did not believe Mrs. Tran's mother moved in as she resided with the Landlords in one of the richest subdivisions in Sarnia.

Analysis

24. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirements pursuant to section 48(1) of the Act which states:

48(1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit for the purpose of residential occupation for a period of at least one year by,

(a) the landlord;

(b) the landlord's spouse;

(c) a child or parent of the landlord or the landlord's spouse; or....

25. The onus is on the Landlord to establish that they, in good faith, require the rental unit for the purpose of residential occupation and that his mother, the other Landlord's mother-in-law genuinely intends to move into the rental unit.

26. The courts have provided much 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 residential occupation by the landlord.

27. 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".

28. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC) the Divisional Court stated at paras 18, 26-27:

In my view, s.51(1) [now RTA s.48(1)] charges the finder of fact with the task of determining whether the landlord's professed intent to want to reclaim the unit for a family member is genuine, that is, the notice to terminate the tenancy is made in good faith. The alternative finding of fact would be that the landlord does not have a genuine intent to reclaim the unit for the purpose of residential occupation by a family member.

While it is relevant to the good faith of the landlord's stated intention to determine the likelihood that the intended family member will move into the unit, the Tribunal stops short of entering into an analysis of the landlord's various options.

Once the landlord is acting in good faith, then necessarily from the landlord's subjective perspective the landlord requires the unit for the purpose of residential occupation by a family member. That is sufficient to meet the s.51(1) standard. The fact that the landlord might choose the particular unit to occupy for economic reasons does not result in failing to meet the s.51(1) standard.

29. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Act, found as follows:

"We accept, as reflected in Salter, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property."

30. I have considered all of the documentary evidence presented at the hearing and all of the oral testimony and, although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
31. In this case, the Landlord testified that her parent-in-law wants to live in the rental unit for at least a one-year period as it would afford each family to live in the same residential complex together and that the experience of living with both her mom and mother-in-law offering them family cultural support, and enabling them a more traditional way of living while raising their children.
32. Based on the evidence and submissions before me, I am satisfied that there is a genuine intent for the Landlords' mother/ parent-in-law to move into the rental unit after the Tenant vacates the unit. The Landlords' mother/ mother-in-law provided a declaration as required by the Act and the Landlord testified at the hearing regarding their intentions. While I appreciate that the Tenant is suspect given the various prior notices issued, I have no reason to doubt the truthfulness of the Landlords or their good faith intentions, specifically since given the history of this matter, despite a change in which parent would be moving into which unit, the intentions of family unification remained the constant. This despite many hearing attendances at the Board and over two years of waiting to gain vacant possession of all three units in the complex. I am satisfied, on a balance of probabilities, that the Landlords requires possession of the rental unit in good faith for residential occupation by his mother and her mother-in-law and that they genuinely intend to reside in the unit for at least one year.
33. I also take into consideration that while considerable time was spent in making submissions about Bibi Ali not having moved into unit #2 as means of raising questions of the Landlords' motives, the former tenant of that unit (CB) testified he moved out on August 3, 2025 and the Tenant testified she was visible to him after the October 20, 2025 hearing date. In the scope of the Act, when reviewing allegations of bad faith evictions the Act refers to considerations of "no one moved in within a reasonable time." What is reasonable is left to interpretation but the fact that she is believed to be living there after two months is in my view reasonable, so it can not be inferred that the Landlords are not doing what they said they would, albeit this is in respect of another application that has

already been decided. Further, I accept the Landlords evidence about the initial steps that they have taken to prepare the complex for multi-generational/ communal living, inclusive of cost assessment and interior planning design.

34. As I am satisfied that the Landlord genuinely intends to occupy the rental unit for residential occupation by their mother/ parent-in-law 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.

Daily compensation & rent deposit

35. The Tenant was required to pay the Landlord \$19,110.56 in daily compensation for use and occupation of the rental unit for the period from March 1, 2024 to April 30, 2026, less amounts paid.
36. Based on the monthly rent, the daily compensation is \$24.16. This amount is calculated as follows: \$735.00 x 12, divided by 365 days.
37. The Landlord collected a rent deposit of \$735.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$150.62 is owing to the Tenant for the period from January 1, 2014 to January 16, 2026.

Relief from eviction

38. 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 April 30, 2026 pursuant to subsection 83(1)(b) of the Act.
39. I have considered that the Tenant has lived alone in the 2-bedroom rental unit for 12-14 years, his place of employment is nearby. He testified that it will be hard to find a place to live given his rent of \$735.00 and he may be overlooked for work call-ins depending on where he moves to as employees living nearby get priority.
40. The Landlord testified that they have financial concerns and want to simplify their lives by selling their primary residence and to move into the residential complex to live with parents and to take care of them. Given their cultural background there is a level of expectation that children will look after their elders. It has been over two years since they have issued the N12 notice to the Tenant.
41. In arriving at the termination date, I have considered the passage of time and impacts on all parties. The Tenant noted that while he had been looking, he has been waiting for the Board to provide further direction on the outcome of this matter. As of the last hearing date, the Tenant has effectively been provided over two months of additional time to evaluate his options, however given the long-standing tenancy, the date of April 30, 2026 is aimed at providing him adequate time to arrange time off work and prepare for a move.
42. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord shall reissue payment to the Tenant on or before April 9, 2026, if they have not already done so, in the amount of \$735.00, this representing the compensation as required by the Act.
2. On condition that the Landlord complies with paragraph 1, above the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2026.
3. If the unit is not vacated on or before April 30, 2026, then starting May 1, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 May 1, 2026.
5. The tenancy between the Landlord and the Tenant is terminated as of April 30, 2026.
6. The Tenant shall pay to the Landlord \$19,110.56, which represents compensation for the use of the unit from March 1, 2024 to April 30, 2026, less amounts paid.
7. The Tenant shall also pay the Landlord compensation of \$24.16 per day for the use of the unit starting January 17, 2026 until the date the Tenant moves out of the unit.
8. The Landlord owes \$885.62 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenant.
9. If the Tenant does not pay the Landlord 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.

April 02, 2026
Date Issued

Alicia Johnson
Member, Landlord and Tenant Board

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