



Order under Section 69 Residential Tenancies Act, 2006

Citation: Mandel v McKane, 2026 ONLTB 29959

Date: 2026-04-14

File Number: LTB-L-006103-26

In the matter of: UPPER, 864 POINT PELEE DR
Leamington ON N8H3V4

Between: Dustin Mandel Landlords
Natalie Wright

And

Stephanie Anne McKane Tenant

Dustin Mandel and Natalie Wright (the 'Landlords') applied for an order to terminate the tenancy and evict Stephanie Anne McKane (the 'Tenant') because:

- the Landlords in good faith requires 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 April 7, 2026.

The Landlords, the Landlords' Legal Representative, Andrea Koenigs, and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the Tenant must vacate the rental unit on or before June 30, 2026.

Preliminary issue: Previous N12 Notice of Termination (N12 Notice) Not Disclosed in the Application

2. The Tenant raised a preliminary issue in that a previous N12 Notice was served on her by the Landlords, however it was not disclosed in the application, and as such, the application ought to be dismissed.
3. The Tenant indicated on November 21, 2025, she was served an N12 Notice by the Landlords by way of email. The Tenant provided a copy of that email to the Board. The Tenant did not produce the actual N12 Notice, but stated she was aware of the contents of the N12 Notice and acknowledged the receipt of it.
4. Section 71.1(3) of the *Residential Tenancies Act, 2006* (the 'Act') requires the Landlord to disclose in their application all previous N12 or N13 notices related to any rental unit owned by the Landlord in the past two years. Section 71.1(4) states that the Board shall refuse to accept an application at filing if the Landlord has not complied with the disclosure requirement.
5. The Tenant was aware of the previous N12 Notice because it was the Tenant who raised the issue, acknowledged she received it, and entered the email into evidence. The Landlords indicate the N12 was defective as at the time of serving the N12 Notice they were not yet the Landlords, they were the purchasers. Both N12's that were served on the Tenant are for the same reasons, that the Landlords require the rental unit for their own personal use. The Landlord's Legal Representative indicated at the time of filing the application, she was unaware of the first N12 Notice that was served on the Tenant.
6. The Divisional Court considered the implications of a landlord's failure to disclose a previous N12 Notice in an eviction application for personal use. In *Miller Estate v. Arguelles*, 2025 ONSC 112. The Court held that failure to comply with s. 71.1(3), "is not to render 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."
7. The Court found that if non-compliance is apparent on its face, the LTB can simply refuse the application. However, once the application is accepted for filing, there is nothing that prohibits the application being amended to include the missing notice information.
8. The present case is similar to *Miller Estate* in that the Tenant was aware of the previous N12 Notice because the Landlord served it upon them, and, therefore, the failure to disclose this notice in the application did not prejudice them. Also, the Landlords attended the hearing and made themselves available for cross examination on the circumstances surrounding the first N12 Notice. Accordingly, I find it appropriate in the circumstances to amend the application to add the previous N12 Notice.

Merits of the Application

9. The Tenant was in possession of the rental unit on the date the application was filed.
10. On January 21, 2026, the Landlords served the Tenant with an N12 Notice by way of mail and email with a date of termination of March 31, 2026. The Landlords claim they require vacant possession of the rental unit for themselves.
11. The Landlord served a valid N12 Notice pursuant to section 48 of the Act. I am further satisfied that the requirements for section 72(1) have been met. The declarations indicate

the Landlords in good faith, intend to occupy the rental unit for residential occupation for up to one year.

12. The parties agree that on January 21, 2026, the Landlords compensated the Tenant by sending an email money transfer in the amount of \$500.00 which is equal to one month's rent. I am satisfied that the Landlord compensated the Tenant pursuant to section 48.1 of the Act.

The Landlord Served the N12 Notice in Good Faith

13. The residential complex has two separate rental units. The space upstairs is occupied by the Tenant which is a bachelor pad style rental unit with a small kitchen and a bathroom, with approximately 600 square feet. The main floor is a two-bedroom rental unit. There is no basement.
14. The first named Landlord testified that they purchased the home and took possession of the home on or about December 15, 2025. The first named Landlord indicates that prior to the purchase of this home, they were renting in Richmond Hill, Ontario. The Landlords claim this is their forever home.
15. When the Landlords purchased the rental unit, there was no one residing on the main floor. The Landlords moved into the main floor of the rental unit approximately three weeks ago. The first named Landlord indicated they never intended to be landlords, they do not want a tenant and require the whole house and plan to use the upstairs rental unit as their master bedroom.
16. The Tenant's position is that she does not believe the Landlords intend to remain in the rental unit for a one-year period, as she says she had a verbal conversation with the Landlords who told her that they spend 6 months in Illinois, USA, at their vacation home.
17. The Landlords do not deny they have a vacation home in the USA and they do spend time there, however their primary residence is now this property. The first named Landlord indicated they will not be visiting the USA until at least after December 2026.
18. The Tenant also feels that because they are in a tourist area and the rental unit backs on to water, that the Landlords will be using the rental unit for Airbnb. The Landlords deny this claim and state that the rental unit will never be used for Airbnb nor as a rental property.

Analysis

19. The courts have provided much guidance to the Board in interpreting "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose of residential occupation by the landlord.
20. In *Feeney v. Noble*, [1994 CanLII 10538 \(ON SC\)](#), the Court held that the test of good faith is 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. The Landlord may also have

additional motives for selecting a particular rental unit, but this does not affect the good faith of the Landlord's notice.

21. 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.
22. The Tenant believes the Landlords will not occupy the rental unit for a period of at least one year as she believes they will be spending most of their time at their vacation home in the USA. The requirement under the Act to occupy the rental unit for a period of one year does not mean the Landlords must sleep there 365 days a year. In *MacDonald v. Richard*, [2008] O.J. No. 6076, the Divisional Court held that the Board had not erred in finding that a temporary 4-month occupancy did not constitute residential occupation. The Landlords testified that they do not plan on going back to their vacation home until at least December 2026.
23. The Tenant also feels that the Landlords will use the rental unit as an Airbnb or rent out the unit to someone else for a higher price. There is no evidence presented to support the Tenant's theory.
24. I found the Landlords to be credible, and I accept the evidence presented that the Landlords in good faith intend to occupy the rental unit for at least one year for the purpose of residential occupation. This also satisfies s. 72(1)(a) of the Act. I also accept the Landlords testimony that they purchased the rental property in December 2025, with full intentions to occupy the entirety of the rental unit including using the top floor as their master bedroom. Further, the issuance of a prior N12 Notice, bolsters the Landlords' position that they have wanted to move into the rental unit prior to officially purchasing the home.

Subsection 83(3)(a): serious breach

25. The Tenant contends that there is a lack of heating in the rental unit. The Tenant is unsure of the exact date she advised the Landlords of the heating issue but it that it may have been January 27, 2026. The Tenant says an inspector came to the rental unit on February 5, 2026, and that nothing has been done since. During the Tenant's testimony, she did not disclose what she thought the temperature in the rental unit was.
26. The Landlords say that they immediately dealt with the heating issue and that an inspector attended the rental unit and conducted readings and that there were no issues with the heating. There is no evidence before me to suggest that the Tenant does not have any heat in her rental unit.
27. The Tenant also submits that the stairs and balcony that she uses to access her rental unit has been deemed unsafe through a house inspection, and on or about January 31, 2026, she has had to use the main entrance that the Landlords also use which enter into the Landlords private spaces.
28. Section 83(3)(a) of the Act states:

Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement.

29. The Act is silent on the definition of serious breach. Tribunals Ontario Interpretation Guideline 7 provides guidance regarding what constitutes a serious breach of landlord responsibilities. The Guideline states that "a health or safety concern due to a lack of repair may be serious enough to justify refusal", and "conditions which deprive the tenant of the full use of the premises will usually be serious, particularly if it affects the kitchen, bathroom or sleeping areas."
30. There is no evidence in front of me to establish that there is no heat in the Tenant's rental unit. And with regards to the entrance, clearly sharing an entrance and entering into the Landlords private space is not ideal, however the Tenant still has access to her rental unit. Although these issues may constitute a breach of section 20 of the Act, they do not constitute a serious breach to such that it is mandatory to refuse the Landlords' application.

Relief from Eviction

31. The Tenant has lived in the rental unit for three years. The Tenant is not working and is on a fixed income. The Tenant is on the waiting list for rent geared to income housing. The Tenant is aware she is only paying \$500.00 in rent which is well below market rent, but that she has been looking for several months for a suitable rental unit but that she cannot afford any. The Tenant is requesting to stay as long as she can in the rental unit.
32. The Landlords are requesting a two-to-three-week eviction as they have purchased this house in December 2025 with the intention of having no tenants. The Landlords submit that there is now a lack of privacy due to the Tenant having to use the main entrance to access her rental unit.
33. The Landlords currently have a place to live in. The current situation of the Tenant having to access her rental unit through a private area is of no fault of the Tenant. I have considered the impact of both parties and will delay the eviction to afford the Tenant more time to find a rental unit.
34. 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 postpone the eviction until June 30, 2026 pursuant to subsection 83(1)(b) of the Act.

Daily Compensation Claim

35. The Landlords made no submissions on daily compensation, therefore this part of the application shall be dismissed.
36. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence presented at the hearing and all of the oral testimony when making my determinations.

37. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

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 June 30, 2026.
2. If the unit is not vacated on or before June 30, 2026, then starting July 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 July 1, 2026.

April 14, 2026
Date Issued

Paula West Oreskovich
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 January 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.