



Order under Section 69 Residential Tenancies Act, 2006

Citation: Christov v Ducharme, 2026 ONLTB 29818

Date: 2026-04-22

File Number: LTB-L-091505-25

In the matter of: 1, 178 JACKSON ST E
HAMILTON ON L8N1L4

Between: Steve Christov Landlords
Phymean Noun

And

Brooke Ducharme Tenant

Steve Christov and Phymean Noun (the 'Landlords') applied for an order to terminate the tenancy and evict Brooke Ducharme (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 March 30, 2026.

The Landlords, the Landlords' Legal Representative, Glenn Gosling, the Tenant and the Tenant's Support, Gabrielle Maynard, attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy shall terminate on September 30, 2026.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N12 Notice of Termination:

3. On October 30, 2025, the Landlords gave the Tenant an N12 notice of termination with the termination date of December 31, 2025. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by Landlord Phymean Noun (PN). Compensation was paid on December 15, 2025 by e-transfer.
4. PN testified that she is a part owner of the rental unit and she requires the rental unit for residential occupation for at least 1 year. PN testified she currently lives in her daughter's apartment in the living room in Toronto. PN further testified that when they bought the house, she was travelling a lot outside of Canada so they decided to rent the house, however her work has slowed down and she is now permanently in Canada. PN further testified that her daughter has a fiancée and the living situation has been difficult as the apartment is only a 1 bedroom and PN stated she has nowhere else to live. PN testified that she has been living in her daughter's living room for 15 months.
5. The Tenant testified that she thinks that the Landlord is going to renovate the unit and then sell it as there are numerous maintenance issues that would need to be fixed prior to the Landlord moving into the unit. However, the Tenant did not have any supporting evidence of her suspicions.
6. The N12 was served pursuant to section 48 of the *Residential Tenancies Act, 2006* (Act). In order to be successful in this application, the Landlord must establish that they require, in good faith, the unit for residential occupation for at least one year.
7. In *Feeney v. Noble*, 1994 CanLII 10538 (ON SC), the Divisional 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), in which the Divisional Court held that the "good faith" requirement simply means that the landlord sincerely intends to occupy the rental unit.
8. 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.
9. I accept the oral evidence of PN that she genuinely intends to live in the unit for at least one year. While the Tenant offered suspicions that the Landlords intended to renovate the unit and sell it, I am not satisfied that the suspicions are sufficient to cast doubt on PN's genuine intentions, especially as there was no evidence provided to support those suspicions. I am satisfied, on a balance of probabilities, that the Landlord requires possession of the rental unit in good faith for their own residential occupation and that she genuinely intends to reside in the unit for at least a year.

Daily Compensation and Rent Deposit:

10. The Tenant was not in arrears as of the date of the hearing.
11. Based on the monthly rent, the daily compensation is \$28.34. This amount is calculated as follows: \$862.00 x 12, divided by 365 days.

12. The Landlord collected a rent deposit of \$811.00 from the Tenant and this deposit is still being held by the Landlord. The rent deposit can only be applied to the last rental period of the tenancy if the tenancy is terminated.
13. Interest on the rent deposit in the amount of \$131.89 is owing to the Tenant for the period from December 1, 2016 to March 30, 2026.

Is the Landlord in serious breach of their obligation under section 83(3)(a)?:

14. The Tenant submitted that the Landlords are in a serious breach of their obligations such that eviction must be denied under s.83(3)(a) of the Act.
15. Where the Board is satisfied that the landlord is in serious breach of the landlord's responsibilities under the Act or any material covenant in the tenancy agreement, it is mandatory to refuse the landlord's application for eviction. In addition to being serious, the landlord's breach, whether of their responsibilities under the Act or of a material covenant, must also be occurring at the time of the hearing. The Act does not define "serious breach".
16. The Board's Interpretation Guideline 5: Breach of Maintenance Obligations, states the following:

"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. Members must decide whether other repair problems constitute a "serious breach" of obligations, considering the landlord's actions to resolve the problems as well. Other factors such as how long the breach was ongoing or the level of risk to the tenants may also be relevant.

In cases related to the obligation to repair, the tenant's conduct may also be relevant. For example, if the tenant has never before complained to the landlord about a long-standing repair problem, they may have shown they did not consider it to be serious. Further, if the landlord was not aware or could not reasonably have been expected to be aware of the problem, the Member may find that the landlord is not in serious breach. Further, the tenant should not have contributed to the problem, such as by obstructing the landlord's repair efforts."

17. The Divisional Court outlines the test for a "serious breach" in *Puterbaugh v. Canada Public Works and Government Services*, [2005] O.J. No 5727. In that case, the court interpreted a "serious breach" in the context of a landlord's statutory duty to repair and maintain the rental unit. At paragraph 22, the Court stated that a "serious breach", in the context of the Landlord's maintenance responsibilities:

Means more than the rental premises being in a poor condition and in need of significant work...In short, a serious breach of the landlord's responsibilities is not established simply by the rental premise being in need of extensive repairs.

18. The purpose of subsection 83(3)(a) of the Act is to ensure landlords do not rely on an eviction of tenants as a means of circumventing their statutory obligations under the Act.

19. That said, when addressing a tenant's arguments pertaining to the landlord's alleged breaches in that case, the Court went on to state: "To accept the Tenant's argument that all breaches of the Landlord's responsibilities that raise health and safety concerns trigger subsection 83(3)(a) of the Act would render meaningless the word 'serious' in that subsection."
20. In *Puterbough*, the Court held that the wording of subsection 83(3)(a) of the Act is in the present tense meaning that the serious breach must be ongoing at the time of the hearing before the Board, not in the past or potentially in the future, and the onus is on the Tenants to prove this.
21. The Tenant testified that there was a break-in in April 2025 and that the door needs to be replaced as the door frame is broken. Both parties agreed that a new lock was installed on the door the same day as the break-in, however, the Tenant testified that it is flimsy due to the broken door frame and could easily be broken into again. I find that the Tenant has not established that this is a serious breach in the Landlords' maintenance obligations.
22. The Tenant further testified that there is a hole about 3 shingles wide in the roof and there is an ongoing leak that has caused mould and damage to the ceiling in the kitchen and in the bathroom. Landlord Steve Christov (SC) testified that the upstairs tenant had sent pictures to him of the roof and that a tarp had been put on the roof at the time the hole occurred and that the needed shingles were added to cover the hole in September/October 2024. SC testified that the Tenant has not raised the issue with him since. The Tenant submitted text messages from December 2024 where she notified SC about the hole in the roof and SC responded that there was a tarp on top of the hole, which deviates from the timeline SC stated the issue was fixed in. The Tenant testified that SC had the upstairs tenant nail on a couple of shingles at some point, however the hole was not properly fixed and the leaking continues. The Tenant acknowledged that the Landlord did complete repairs on the roof, though they were insufficient. I am not satisfied that the Tenant notified the Landlords of a continued issue with the roof, therefore this is not a serious breach of the Landlords' maintenance obligations because the Landlords could not have known to fix something they were not notified about.
23. The Tenant submitted photos from her kitchen showing different holes in the ceiling due to the ongoing leaking. The Tenant testified that the pictures show the presence of mould as well, however I did not observe any visual signs of mould, though the holes in the ceiling were clear. The Tenant testified that the pictures were taken in 2024 and that the Landlord has been in the home since then to renovate the foundation, so he would have seen the holes in the ceiling and the mould himself. There were no updated photos provided of the hole in the roof or the presence of mould in the kitchen and bathroom.
24. SC testified that the Tenant has never complained of mould. SC testified that about 2 years ago the upstairs toilet had a leak which impacted the kitchen ceiling, and the ceiling and drywall were then replaced in the summer of 2024. When the ceiling was replaced, SC testified no mould was seen in the kitchen.
25. While the leak may be ongoing, I am not satisfied that the Tenant established on a balance of probabilities that she ever notified the Landlords of the leak as she relied on an assumption that the Landlords should have known since they completed renovations in the basement. Therefore, this is not a serious breach of the Landlords' maintenance

obligations because the Landlords could not have known to fix something they were not notified about.

26. The Tenant also testified that she does not have a working stove. SC testified that on November 19, 2024 the Tenant notified him that there was an issue with the igniter on the stove, however, she said she was going to have her friend fix it. This claim was supported by text messages that were submitted into evidence. SC testified that the Tenant did not raise the issue again until the hearing. The Tenant did not provide any oral or documentary evidence that she ever notified the Landlords again that the stove was never fixed. I am not satisfied that the Tenant notified the Landlords that the stove was not working after she notified them that she was having a friend fix the igniter. Therefore, this is not a serious breach of the Landlords' maintenance obligations because the Landlords could not have known to fix something they were not notified about.
27. The Tenant testified that there remains an issue with the foundation and the stairs in the basement. The Tenant testified that the Landlord did not provide notice that he was going to be removing the stairs to renovate the foundation and she almost fell into the basement when she went to do laundry. The Tenant further testified that the Landlord has not fixed the foundation, only took dirt out of the basement. The Tenant then testified that when the basement stairs were re-installed, the Landlord left a large drop at the bottom, and she fell down the stairs and broke her arm due to the gap. The Tenant submitted photo evidence that shows there is a larger than normal gap between the bottom stair and the ground of the basement.
28. SC testified that the foundation was supposed to be fixed in October 2024, however it was delayed at the request of the Tenant. SC further testified that the foundation was renovated between September and October 2025 and that all issues have been fully corrected. SC testified that the stairs were detached for about a week for work on the foundation, and that since re-installing the stairs, the Tenant has not complained about any issues with the stairs. The Tenant did not provide any oral or documentary evidence to identify that she had notified the Landlords of an issue with the stairs since the foundation work was completed. Photos were submitted by the Tenant of the foundation prior to the renovation, however neither party submitted photos from after the renovations.
29. I am not satisfied that the Tenant notified the Landlords that there was an issue with the stairs after they were re-installed or there is a continued issue with the foundation. Therefore, this is not a serious breach of the Landlords' maintenance obligations because the Landlords could not have known to fix something they were not notified about.
30. The Tenant further raised issues with sewage leaking into the basement in 2019, however she acknowledged that those were not current issues.

Additional Section 83(1) Considerations:

31. The Tenant testified she has been living in the rental unit for 10 years and she has physical and mental disabilities that impact her ability to move. The Tenant testified she has a heart condition, visual impairment from a stroke, and she currently has a broken arm due to falling down the basement stairs.

32. The Tenant further testified that her yearly income is low—approximately \$30,000.00—and she has a dog, so she will have a difficult time to find alternative housing that she can afford. The Tenant testified that she is on a waiting list for housing through the city of Hamilton, however, that could take years and she would be at risk of homelessness due to her income and disabilities. The Tenant asked for a delay in eviction for at least 6 months.
33. The Landlords were seeking an eviction within 30 days, as PN continues to have to live with her daughter in the living room.
34. 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 September 30, 2026 pursuant to subsection 83(1)(b) of the Act. I accept the Tenant's evidence that she will be significantly impacted by an eviction due to her mental and physical disabilities. While I accept that the Landlord will be inconvenienced by such a delay, she currently has a home and did not submit any evidence regarding urgency for the occupation aside from the inconvenience. I am satisfied that delaying the eviction until September 30, 2026 would not be unfair in the circumstances.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before September 30, 2026.
2. If the unit is not vacated on or before September 30, 2026, then starting October 1, 2026, the Landlords 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 October 1, 2026.
4. The Tenant shall pay the Landlords compensation of \$28.34 per day for the use of the unit starting March 31, 2026 until the date the Tenant moves out of the unit.
5. The Landlords owes \$942.89 which is the amount of the rent deposit and interest on the rent deposit.
6. However, the Landlord is authorized to deduct from the amount owing to the Tenant \$28.34 per day for compensation for the use of the unit starting March 31, 2026 to the date the Tenant moves out of the unit.
7. The Landlord or the Tenant shall pay to the other any sum of money that is owed as a result of this order.

April 22, 2026
Date Issued

Allana McComb
 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 March 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.