



Order under Section 69 Residential Tenancies Act, 2006

File Number: LTB-L-006150-26

In the matter of: Basement & Main Floor, 754 TUSCARORA
ST
Windsor ON N9A3M6

Between: Mbao "Christine" Machina Landlord
Alfred Bauer

And

Lynnette Jallow Tenant

Mbao "Christine" Machina and Alfred Bauer (the 'Landlord') applied for an order to terminate the tenancy and evict Lynnette Jallow (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 April 7, 2026.

The both named Landlord's and the Landlord's Legal Representative Sarah Bauer Cooke and the Tenant attended the hearing.

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.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, I am satisfied that mandatory refusal is required. Therefore, the application is dismissed.

The Mortgagee in possession

2. At the hearing the Tenant indicated that Alfred Bauer was a mortgagee in possession, and the rental unit was under power of sale. The Tenant did not direct me to documentation in support of this assertion. The Landlord's Legal Representative indicated that a statement of claim was filed in 2024, the Landlord provided evidence of financial hardship, the notice period lapsed, and a default judgement was issued. However the mortgagee never moved to obtain a writ of possession. Instead, they came to an agreement with the Landlord to allow her to bring the mortgage back into good standing.
3. Based on the evidence before me, I am not satisfied that there is a mortgagee in possession. The Tenant's assertion was not supported by any documentation, and the exemption provided by the Landlord's Legal Representative was consistent and logical. I am therefore prepared to accept that while the Landlord had defaulted on the mortgage and the mortgagee could have elected to take possession, I am not satisfied that this has occurred.

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4. The Tenant was in possession of the rental unit on the date the application was filed.
5. On October 23, 2025, the Landlord 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 the Landlord
6. The Landlord in good faith requires possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.
7. The Landlord has compensated the Tenant an amount equal to one month's rent by December 31, 2025.
8. The Landlord testified that she purchased the rental unit in 2022 with the intent of using the property as a home at that time and moved in. However, she became ill and in 2023 and had to vacate the home and list it for sale. She testified that a sale which was intended to close in March 2024 was frustrated because the Tenant moved from the basement to the upstairs of the rental unit. She testified that when the purchase agreement failed it impacted her finances, and she is now carrying both rent for her current residence and a mortgage for the rental unit.
9. She testified that she is currently living with 6 others in a two bedroom rental unit and intends to move back into the rental unit, she testified that she is paying the unities for the rental unit and is also paying the mortgage and a rent payment and will be able to save funds by moving back into the rental unit.
10. The Landlord also testified that the rental unit was closer to her place of employment than her currant home.
11. She denied neglecting the rental unit or allowing vital services to lapse.
12. The Landlord Alfred Bauer testified that there is electrify and water running in the rental unit. However, the furnace in the rental unit is dirty and he has not had the opportunity to service it, and the Tenant has been using electrical headers all winter.

13. He testified that the unit is heated by natural gas and the furnace was shutoff in August 2025 and is not currently functional. He testified that it was reported that it was shutoff because a cleaning was required and he believed that the shutoff was performed by the ESA.
14. He testified that on October 23, 2025 he attended with an appraiser and asked the Tenant if he wanted a new stove, he denied that the Tenant had told him the furnace was disconnected at this time and instead testified that the Tenant had told him there was not heat. He testified that he was not allowed entry to the rental unit on this day.
15. He testified that he has attempted to enter the rental unit to clean the furnace including on November 28, 2025 but was not granted permission to enter and instead the Tenant called the police when he attempted to enter the unit. The Landlord relied on a police report in support of this testimony. The report indicates that the Landlord has served a notice of entry, and even though he could have exercised his lawful entry he advised the responding officer that he will be contacting the sheriff for further assistance regarding entry and the eviction process.
16. He testified that he attempted enter to look at the furnace because he was under the impression that it was not functioning properly.
17. The Landlord also testified that he became aware that repairs to the furnace were required only two weeks ago when he receive the Tenant's evidence package.
18. He denied obtaining a writ of vacant possession and serving this on the Tenant on December 27, 2024 but confirmed that he had attended the rental unit and offered the Tenant compensation to vacate.
19. He relied on utility bills depicting gas usage for the billing period ending September 15, 2025. And the period from August 2025 to March 2026. These bills depict fluctuating gas usage and charges to the rental unit between September 2025 and March 2026.
20. He testified that he could not speak to whether the rental unit had been without heat for 3 winters and testified that there was heat this winter.
21. The Tenant testified that the Landlord's Application was not made in good faith because the rental unit has been without vital services for two years. The Tenant testified that the Landlord simply wants to move back in so that she can sell the house. She testified that the house is under power of sale and the Landlord is attempting to perform mortgage fraud and wishes to evict her so that the house may be sold under power of sale. She also testified that as the house is under power of sale the Landlord cannot move in.
22. The Tenant testified that both the water and electricity were off to the unit for over a year and when they were reconnected the furnace was disconnected on August 1, 2025, because the combustion chamber was dirty.
23. She testified that she informed the Landlord on August 1, 2025, in the memo section of her rental E-transfer that the furnace had been disconnected and also made the Landlord aware on October 23, and October 28, 2025 and the Landlord did not acknowledge the disconnection until two weeks ago.

24. The Tenant denied that she had ever denied entry and denied that the Landlord had ever informed her they were attending the rental unit to restore the heat.

Analysis

25. Based on the evidence before me I am prepared to accept that the Landlord genuinely intends to occupy the rental unit.
26. 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.
27. 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.
28. In this case I am satisfied that the Landlord has met the requirements under section 48 of the Act.
29. The Landlord's testimony was consistent, and I am prepared to accept that she formerly resided in the rental unit and wishes to resume occupancy of the unit due to lessen her financial burden, have more space and be closer to her employer.
30. While the Tenant asserted that the Landlord simply wished to remove her from the rental unit so that it could be sold under power of sale this testimony was largely unsupported by documentation, and I am not satisfied that the lack of heat in the rental unit is itself determinative of bad faith.
31. However, while I am satisfied that the Landlord genuinely intends to occupy the rental unit, I find that mandatory refusal of eviction is required as the Landlord is in serious breach of their obligations.

Serious Breach

32. Section 83(3)(a) of the Act states that the Board must refuse to grant an eviction 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". In order for this section to apply the breach must be significant in its impact on the Tenant and it must be ongoing as of the date of the hearing.
33. The Act itself does not define "serious breach". The leading case of the Divisional Court which outlines the test for a "serious breach" is *Puterbough 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.

34. Ultimately, it was not disputed that the rental unit is heated by a natural gas furnace. I am prepared to accept that this furnace has been inoperable since it was shutdown by the ESA August 1, 2025. While the Landlord's Legal Representative suggests that the lack of heat does is not serious enough to rise to the level of a serious breach, as the Tenant did not adequately raise the issue despite ample opportunity and frustrated the Landlord's attempts to retore the heat by denying entry and being confrontational.
35. I also note that the Landlord also relied on bills from Enridge Gas from August 2025 to March 2026 which do appear to depict gas usage from the rental unit. However, the Landlord also backloaded that the furnace was disconnected by the ESA on August 1, 2025, and appeared to allow that as of the hearing date there was a problem with the furnace. Therefore, I am not satisfied that the gas bills alone are demonstrative of the furnace functioning and adequate heat within the rental unit.
36. However, I am satisfied that the Tenant made the Landlord aware on August 1, 2025, in the memo included with her interact E-transfer. While this transfer was autoreplied, I note that the memo also indicates that the water was restored that day. In my view if a rental unit is experiencing a ongoing lack of vital services it would be reasonable to expect the Landlord to be attuned to any communications from the Tenant. Especially as the payment of rent represents an opportunity to convey updates and concerns to the Landlord.
37. I am also not satisfied by the Landlord's explanation that they were both unaware of the lack of heat until two weeks before ethe hearing date, and simultaneously unable to address the issue because the Tenant denied entry to restore the heat. While I am prepared to accept that the Tenant was not receptive to entry, if the Landlord were unaware of the ongoing issue they would not be entering to restore the heat, and I am not prepared to accept that the Landlord was simultaneously unaware of the issue, and attempting to enter to rectify an issue they were unaware of. Instead, I find it more likely that the entries interfered with by the Tenant were for other reasons.
38. I also note that while there was an interim order from the Board directing the Tenant to allow the Landlord access to performance maintenance work and this was violated by the Tenant, I note that the police report relied on by the Landlord clearly indicates that the Landlord could have excise their right of entry and instead elected to contact the Sherrif for assistance with entry and eviction. It does not appear that there was an active eviction order at that time that would require sheriff enforcement, and I would expect that if the Landlord were aware of lack of heat in the rental unit they would exercise that right of entry, especially given that an N12 had already been served and the lack of heat could be raised as a serious breach of maintenance obligations.
39. While the Tenant also alleges that there was no electricity and no water in the rental unit for years prior, these issues have both been resolved and therefore do not constitute a serious breach. However, it does suggest that the Landlord was not prompt in resolving maintenance issues within the rental unit.
40. The RTA defines vital services as:

- heat (from September 1 to June 15, in most cases a minimum temperature of 20 degrees Celsius as set out in section 4 of O. Reg. 516/06) See: HOT-01008-16 (Re), 2017 CanLII 9541 (ON LTB),
- fuel,
- electricity,
- gas,
- hot or cold water.

41. While the Tenant was able to use electric heaters, I note that the rental unit is intended to be heated by natural gas and note that the Tenant has been without the ability to use the furnace since August 1, 2025. I am also prepared to accept that the lack of heat has had a significant impact on the Tenant and note that a large portion of the time the Tenant was without functional furnace was from the period of September 1 to June 15, when a minimum temperature is required within the rental unit. Therefore, I am satisfied that this constitutes a serious breach of the Landlord's maintenance obligations and refusal of eviction is required.

It is ordered that:

1. The Landlord's Application is dismissed.

May 15, 2026
Date Issued

Reid Jackson
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.