



Order under Section 69 Residential Tenancies Act, 2006

Citation: Martins v Warren, 2026 ONLTB 40134

Date: 2026-05-26

File Number: LTB-L-002483-26

In the matter of: 9 Wiltse Street
ATHENS ON K0E1B0

Between: Michelle Martins Landlord

And

Cheryle Warren Tenant

Michelle Martins (the 'Landlord') applied for an order to terminate the tenancy and evict Cheryle Warren (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 March 24, 2026.

The Landlord, the Landlord's legal representative Michelle Martins, the Tenant, and the Tenant's legal representative Cathy J. Easter attended the hearing.

Determinations:

1. As explained below, the Landlord has not proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the application is dismissed.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 9, 2026, the Landlord gave the Tenant an N12 notice of termination with the termination date of March 31, 2026. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation by the Landlord.
4. The Landlord has not proven that they in good faith require possession of the rental unit for the purpose of their own residential occupation for a period of at least one year.

5. The Landlord testified credibly at the hearing about her intent to move into the rental unit. She testified that she purchased the residential complex – a side-by-side duplex – with the intention of moving into the Tenant's rental unit and having her 29-year-old son move into the adjoining unit. She specifically testified that she does not have any personal ties in Athens, the community in which the residential complex is located, and that she came to purchase the property after a province-wide search for a duplex in a small town. The Landlord testified that she and her son are currently residing with her parents in Whitby.
6. This is the Landlord's application and, therefore, she bears the burden of proving her intention to occupy the rental unit on a balance of probabilities. Per the Divisional Court in *Fava v. Harrison*, 2014 ONSC 3352, "the only issue is whether the landlord has a genuine intent to reside in the property" (at para. 17)". In my view, this has not been established on a balance of probabilities.
7. As stated above, I found the Landlord's testimony to be credible: she was forthcoming about the process of purchasing the residential complex and her plans for the rental unit.
8. However, in my view, her testimony is insufficient to establish her genuine intent to reside in the property. The plans credibly presented by the Landlord are conditional on the intentions and conduct of another party: the Landlord's son. By her own testimony, the Landlord's intention to move into the rental unit is conditional on her son's intention to move into the vacant unit next door.
9. No evidence was presented at the hearing regarding the son's desire or intention to move to Athens, to live in the adjoining unit owned by his mother, or to stay there for a minimum of one year. While the Landlord testified that her son is autistic and that she supports him in various aspects of his daily life, this does not mean – in and of itself – that he would not be able to testify at the hearing about his own plans for moving into the residential complex.
10. The parties agree that, as of the hearing date, neither the Landlord nor the Landlord's son live in the vacant unit adjacent to the Tenant's rental unit. While the Tenant testified that she has heard the Landlord working on the unit next door on a few occasions, she has not observed the Landlord moving in any personal possessions.
11. Applications filed pursuant to notices served under section 48 are not guaranteed to be granted: a landlord must prove that it is more likely than not that they have a good faith intention to reside in the rental unit for at least one year. In my view, where – such as in this case – a landlord's plans are conditional on the plans of a third party, proof of those intentions is critical to the success of the application. Without it, any finding of the Landlord's good faith intention to reside in the Tenant's unit would be speculative. I am not satisfied that there is sufficient circumstantial evidence before me to draw any reasonable inferences about the Landlord's son's plan or desire to move into the adjacent, one way or another.
12. Having found that the Landlord has failed to prove her good-faith intention to reside in the rental unit for a period of at least one year, the application must be dismissed.

It is ordered that:

1. The Landlord's application is dismissed.
2. Pursuant to section 73.1 of the Act, the Tenant shall repay any compensation they received under section 48.1 of the Act from the Landlord in respect of this application within 30 days of the date of this order.

May 26, 2026
Date Issued

Jeremy Henderson
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.