



Order under Section 69 Residential Tenancies Act, 2006

Citation: MARIANI v CURRY, 2026 ONLTB 41897

Date: 2026-05-27

File Number: LTB-L-013885-26

In the matter of: 1102 GLADSTONE AVE
WINDSOR ON N9A2S1

Between: DONAVAN MARIANI Landlord

And

DAN CURRY Tenants
SANDY CURRY

DONAVAN MARIANI (the 'Landlord') applied for an order to terminate the tenancy and evict DAN CURRY and SANDY CURRY (the 'Tenants') 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 Tenants remained in the unit after the termination date.

This application was heard by videoconference on May 7, 2026.

The Landlord's Legal Representative, Richard Lammers, the Landlord, the Tenants' Legal Representative, Tori-Lee Jenkins and the Tenants attended the hearing. The Landlord's witness, Valeta Mariani also attended the hearing.

Determinations:

1. Although the Landlord proved, on a balance of probabilities, that they require vacant possession of the rental unit for the Landlord's mother's own use for at least one year, I conclude it is appropriate to exercise my discretion under subsection 83(1)(a) of the *Residential Tenancies Act*, 2006 (the "Act") to refuse to grant the application, based on all of the circumstances.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. The rental unit is a single detached house with two bedrooms.

4. On December 10, 2025, the Landlord served the Tenants an N12 notice of termination deemed served on the same date with the termination date of February 28, 2026. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for his mother.
5. In support of this application, the Landlord filed a declaration from his mother, Valeta Mariani dated February 20, 2026 which stated that she required the rental unit for her own personal residential occupation for a minimum period of one year. That declaration complied with section 72(1) of the Act and both the Landlord and his mother provided further evidence at the hearing.
6. I have carefully reviewed the documentary evidence before me, the testimony of the parties and I have considered the parties' submissions. 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.

Evidence of Landlord , Donovan Mariani (DM)

7. The Landlord testified that he owns this rental unit and two other properties but this rental unit is the only small house that would be suitable for his mother. He stated that his mother is 77 and would not be able to take care of a big house on her own.
8. DM stated that his mother requires her own place to live because she has been having many issues living with his father. He stated that his mother is extremely stressed living with his father and that it is necessary for her mental health to have her own place.
9. The Landlord stated that he paid the compensation of \$1,025.00 to the Tenants on February 16, 2026.
10. In cross-examination, the Landlord was asked if any recent events happened regarding the maintenance of the house and if he was involved in the issue. The Landlord stated that he is not familiar with any recent maintenance issues in the rental house.

Evidence of Valeta Mariani (VM)

11. VM testified that she has been married to her husband since 1970 and that they have lived in their home together for 30 years. She stated that the only reason that she stayed with her husband was due to the children. She stated that her husband does not communicate with her but instead yells, screams and berates her.
12. VM stated that they have separate beds, they eat their meals separately and her husband does not speak to her. He speaks in Italian, he continuously abuses her verbally and he has for several years but it has gotten intolerable. She stated that she must move out of her home for her own sanity and well-being.
13. VM stated that she is on blood pressure medication and that the stress of living with her husband makes her blood pressure spike. She stated that she has issues with mobility and has to use a cane or walker. She cannot spend time in her backyard because her husband filled it with stones so that she would not be able to walk in the yard.

Evidence of Tenant, Dan Curry (DC)

14. The Tenant testified that he and his wife have resided in the 2-bedroom house for the last 15 years.
15. DC stated that in June of 2025, the Landlord told him that he may have to vacate the house because his niece was thinking about buying the rental property. He said that he did not hear anything further about that idea.
16. DC stated that in early December of 2025, they were having problems with the furnace in the house and they advised the Landlord of this problem. He stated that on December 6, 2025, the furnace was very loud and was not shutting off so a furnace technician attended at the house to inspect the furnace.
17. The Tenant stated that he was told that the furnace had to be removed and it had to be replaced with a new one. He stated that a new one arrived shortly after that. DC stated that on December 7, 2026 the Landlord said to him, "How would you like to put the furnace payments on your rent at say \$1,100.00 per month instead of having no place to rent?" He stated that his current rent was \$1,025.00 per month and that the Landlord wanted him to pay \$75.00 more per month to cover the expense of the new furnace.
18. DC stated that 5 days later on December 12, 2025, he was served with the N12 notice of termination. The Tenant does not believe that the Landlord is bringing this application in good faith. He believes that this is retaliation from the Landlord due to the fact that the Landlord had to incur expenses for the new furnace and the Tenant did not agree to increase his rent.
19. The Tenant stated that he and his wife are 76 and 74 years old and that they both have health issues including problems with mobility. He stated that his wife gets very upset with change and this would be incredibly difficult for her. He said that a move would be very hard for them as they have good friends in the neighbourhood and their rent is affordable based on their small pensions including OAS and CPP.

Analysis and Application of the Law

20. On an application before the Board, the person who seeks an order terminating the tenancy has the burden of leading sufficient evidence to establish that i) the technical requirements of the Act have been met, and ii) it is more likely than not that their version of events is true. In this case, the burden falls on the Landlord.
21. The N12 notice served pursuant to subsection 48(1)(a) of the Act allows a landlord to give a notice of termination if the landlord requires possession of the rental unit for the purpose of residential occupation for at least one year.
22. In making its determinations under section 48, the Board must also consider the good faith intent of the applicants. Under section 72 of the Act, the Board cannot terminate a tenancy and evict the tenant unless the landlords have satisfied that they are proceeding in good faith.

23. The leading case on the determination of good faith in a landlord's own use application is *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No. 2792 (Div. Ct.). *Salter v. Beljinac* was decided under a similarly worded section of the previous legislation. The test is whether, on a balance of probabilities, a landlord genuinely wants the rental unit and intends to occupy, or have his family member occupy, the unit as a residence. The test before me in this case is whether the Landlord's mother genuinely intends to move into the rental unit and occupy it for a period of at least one year. I must also confirm that the Landlord has a good faith intention for his mother to move into the rental unit for at least one year.
24. The subsequent case law also confirms that while the good faith of the Landlord remains the test to be applied in this application, I may also draw inferences about the Landlord's good faith from the Landlord's conduct and motives [*Fava v. Harrison* 2014 ONSC 3352 (ONSC DC)]
25. Although the Landlord's evidence was somewhat vague, it was clear to me that he wanted his mother to move to a safe and healthy environment for her own mental health.
26. The Landlord's mother testified in a straightforward but emotionally charged manner. Her intention was to escape her current living arrangement where she is verbally abused every day.
27. While the Tenant mentioned that he did not believe that the Landlord's mother intended to move into the rental house, he provided no compelling evidence challenging the Landlord's intentions.
28. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's and Landlord's mother's testimony or their good faith intentions. I am therefore satisfied on a balance of probabilities that the Landlord served the N12 notice in good faith and his mother intends to reside in the rental unit for no less than one year.

Discretionary Relief from Eviction

29. Subsection 83(1) (a) of the Act states that the Board may refuse to grant an application to terminate a tenancy and evict a tenant if, having regard to all the circumstances, it is not unfair to do so.
30. According to section 83(3) of the Act, certain circumstances require that the Board refuse an application. These circumstances include where a landlord is in serious breach of its responsibilities under the Act, where an application has been brought due to a tenant complaining to a governmental authority of a landlord's violations, where an application has been brought because the tenant attempted to secure or enforce his legal rights, where an application is brought because the tenant is a member of a tenant's association or the reason for the application being brought is that the rental unit is occupied by children and it does not constitute overcrowding.
31. The facts before me, particularly the Landlord's statement that the Tenants should increase their rent to \$1,100.00 per month instead of having no place to rent, supports the Tenants' allegation that the Landlord formed his decision to repossess the rental unit

because the Tenants refused the unlawful increase of rent. The Landlord served the N12 notice to the Tenants 5 days after the Landlord made that statement. It is these kinds of circumstances where the discretionary relief provisions of the Act were designed to apply to, where it would be most unfair to grant the application requested despite a finding of landlord's own use. The Tenants had no obligation to comply with the Landlord's unlawful demands and should not now have to pay the price by being evicted because they attempted to enforce their legal rights.

It is ordered that:

1. The Landlord's application is dismissed.

May 27, 2026
Date Issued

Carrie Bertrand
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.