



Order under Section 69 Residential Tenancies Act, 2006

Citation: Silveira v Grainger, 2026 ONLTB 39514

Date: 2026-06-05

File Number: LTB-L-009899-26

In the matter of: 1, 6 BADEN ST
TORONTO ON M6J1Z4

Between: Lucy Silveira Landlords
George Silveira

And

Rebecca Grainger Tenants
David Gray

Lucy Silveira and George Silveira (the 'Landlords') applied for an order to terminate the tenancy and evict Rebecca Grainger and David Gray (the 'Tenants') because:

- the Tenants did not pay the rent that the Tenants owes (L1 Application);
- the Tenants have been persistently late in paying the Tenants' rent (L2 Application); and
- the Landlord in good faith requires possession of the rental unit for the purpose of residential occupation for at least one year (L2 Application).

This application was heard by videoconference on April 23, 2026.

The Landlord, Lucy Silveira, the Landlords' Legal Representative, J. Steinmetz, and the Tenants attended the hearing. The Landlords' witness, Emma Silveira, was also present.

Preliminary Issue:

Disclosure of evidence

1. For the following reasons, the Tenants shall not be permitted to rely on documents they failed to provide to the Board or the Landlords in accordance with the Board's Rule 19.1.
2. The Notice of Hearing provides information as to what a party must do should they have evidence they intend to rely on at the hearing. Parties are required to give the opposing party and the Board a complete copy of all evidence at least 7 days before the hearing. In this case, the Tenants were required to provide the Landlords and the Board with a complete copy of their evidence no later than April 16, 2026.

3. While the Tenants uploaded several documents to the Board's portal, they did not provide a copy to the Landlords. The Tenant, David Gray (DG) testified that he wasn't aware of the requirement to serve the evidence separately on the Landlords.
4. The Landlords' Legal Representative became aware of the same on or around April 20, 2026, when he logged on to Tribunals Ontario Portal but did not have adequate time to respond or prepare for the same.
5. I am not convinced the Tenants complied with the disclosure requirements as set out in the Notice of Hearing and the Board's Rules of Procedure. The Tenants did not provide a sufficient explanation as to why they were unable to comply with the disclosure requirements. I believe it would be prejudicial to the Landlord to permit the Tenant to rely on this evidence.

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlords served the Tenants with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenants did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenants was still in possession of the rental unit.
3. The lawful rent is \$1,944.00. It is due on the 1st day of each month.
4. Based on the Monthly rent, the daily rent/compensation is \$63.91. This amount is calculated as follows: \$1,944.00 x 12, divided by 365 days.
5. The Tenants has paid \$1,875.00 to the Landlords since the application was filed.
6. The rent arrears owing to April 30, 2026, are \$12,065.00.
7. The rental unit is a three-bedroom unit consisting of the lower floor and basement, with exclusive use of the backyard and laundry facilities. Since the application was filed, Tenant Rebecca Grainger and an occupant, Chris Northy ('CN') have vacated the rental unit. DG remains in possession.
8. The Tenants dispute the arrears claimed in both the L1 application and the N4 Notice. They submit that CN resided in the rental unit as an occupant and paid \$1,100.00 per month directly to the Landlords between March 2025 and October 2025. The Tenants deducted these amounts, totalling \$9,900.00, from the rent.
9. The Landlord, Lucy Silveira, testified that CN had a separate lease agreement with the Landlords and that the Tenants were aware of this arrangement. The Landlords do not dispute that CN resided in the rental unit and paid \$1,100.00 monthly.
10. A landlord is not permitted to separately lease or charge rent for part of a tenant's rental unit to an occupant or guest. The amounts paid by CN must therefore be considered as payments toward the rent for the rental unit. As these payments were not reflected on the

N4, the amount claimed owing is incorrect and the N4 notice is invalid, and the application is dismissed.

L2 Application – Persistent Late Payment of Rent

11. The tenancy started in 2013. The rent is due on the 1st day of each month.
12. The N8 Notice alleges persistent failure to pay rent on time from March 2025 to April 2026. The Tenants acknowledge that they paid the rent late on several occasions during this period.
13. There is a difference between paying the rent that is due, but not on the date on which it is due (i.e., late payment of rent) and not paying the rent that due at all (i.e., failure to pay rent). While both constitute breaches of these lease by the tenant, they are conceptually different and may lead to different legal consequences. In *Tataw v. Minto Apartment Limited Partnership*, 2023 ONSC 4238 (Div. Ct.), para 14, Justice Corbett stated:

Persistent late payment of rent, and non-payment of rent, are related but distinct bases for applications before the Board. Landlords are entitled to be paid rent on time, as it falls due. Where an application is brought in respect to current arrears, if the Board finds for the landlord, the usual order is for a voidable order terminating the tenancy: if the tenant pays up the arrears and further rent accruals by a specified date, then the termination order is voided. Where the Board finds persistent late payment of rent, the Board may terminate the tenancy, or it may impose some other order – for example, for timely future payment of rent, failing which the landlord may seek a termination order.

14. It is true that an N8 notice is said to be given on the basis of persistent late payment of rent. However, strictly speaking, the *Residential Tenancies Act, 2006* (the 'Act') does not speak in those terms. Instead, Section 58(1)(1) of the Act permits a landlord to give a notice of termination where "[t]he tenant has persistently failed to pay rent on the date it becomes due and payable."
15. Based on the evidence before me, I find that the Tenants have persistently failed to pay rent on the date it became due.

L2 Application – Landlords' own use

16. The Tenants were in possession of the rental unit on the date the application was filed.
17. On November 18, 2025, the Landlords gave the Tenants an N12 notice of termination deemed served November 23, 2025, with the termination date of January 31, 2026. The Landlords claim that they require vacant possession of the rental unit for the purpose of residential occupation by their daughter. The Tenants did not vacate the rental unit by January 31, 2026.
18. The Landlord has compensated the Tenants an amount equal to one month's rent by January 31, 2026, via cheque.

19. The residential complex consists of an upper unit and a lower unit. The Landlords' daughter, Emma Silveira ('ES') currently resides in the upper unit and the Tenants reside in the lower unit.
20. The Landlords testified that their daughter intends to extend her living space to lower unit as sharing the property with other tenants has caused their daughter stress and is affecting her well being and mental health.
21. ES attended the hearing to provide direct evidence as to her intentions. She explained that the upper unit no longer meets her needs as she works remotely from home and requires additional space. She further explained that by extending her living space to the lower level, she will have more room for storage, a gym, laundry and to host friends and family. She intends to make the residential complex her family home and confirmed she would personally occupy the lower unit for a period of at least one year.
22. The Tenants did not present any evidence challenging ES' testimony that she intends to move into the rental unit. Rather, the Tenants question why ES, who is single and lives alone, would want to reside in a five-bedroom multi-level home, The Tenants believe ES has enough room in the upper unit and explained that they are willing to provide her with more access to the laundry room and backyard.
23. The Tenants testified that the Landlords' intentions for the lower unit did not rise until ES began living in the upper unit. They stated that any issues ES has with sharing the building with them can be mitigated by repairing the door and them smoking away from the door.

Analysis

24. This N12 notice was served pursuant to section 48(1)(c) of *Residential Tenancies Act, 2006* (the 'Act') which states.

48 (1) A landlord may, by notice, terminate a tenancy if the landlord in good faith requires possession of the rental unit **for the purpose of residential occupation for a period of at least one year** by,

(c) a child or parent of the landlord or the landlord's spouse; or

25. The burden of proof lies with the Landlords to establish that they, in good faith, require the rental unit for the purpose of residential occupation for at least one year by their daughter.
26. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001 CanLII 40231](#) (ON SCDC), [2001], O.J. No. 2792 (Div. Ct.), the Ontario Divisional Court stated that 'the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal. The Divisional Court also stated that the Landlords may have additional motives for selecting a particular rental unit, but this does not have affect the good faith of the Landlords.
27. While the good faith of the Landlords remains the test to be applied, I may also draw inferences about the Landlords' good faith from the Landlords' conduct and motives. (Fava v. Harrison [2014 ONSC 3352](#) (ONSC DC).

28. The Tenants did not sufficiently challenge the intentions of ES. No evidence was led indicating ES does not intend to move into the rental unit. The Tenants may question why ES would need such a large living space but as explained in *Salter*, the reasonableness of ES' desire for the rental unit is not the test of good faith.

Relief from Eviction

29. 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 eviction to July 15, 2026, pursuant to subsection 83(1)(a) of the Act.
30. The Tenants have lived there for 13 years and have built a community there. They have always paid their rent and have been good Tenants. DG works in the area and is part of the Neighbourhood Community group. DG requests time to move out as rentals in the area are limited. The Tenant also has a senior outdoor cat who will be substantially challenged from a move to a newer area.
31. The Landlords seek a standard order which I find would be unreasonable considering the length of the tenancy and other circumstances. There is also no urgent need for the Landlord's daughter to move in, and a slight delay may not prejudice her substantially.

It is ordered that:

L1 Application – Non-Payment of Rent

1. The Landlord's L1 application is dismissed.

L2 Application – Persistent Late Payment of Rent

2. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before July 15, 2026.
3. If the unit is not vacated on or before July 15, 2026, then starting July 16, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 16, 2026.

June 5, 2026
Date Issued

Sheena Brar
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 expires on February 15, 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.