



Order under Section 69 Residential Tenancies Act, 2006

Citation: Upadhyay v Lee, 2026 ONLTB 45418

Date: 2026-06-15

File Number: LTB-L-016802-26

In the matter of: Main Floor, 1477 Danforth RD
Scarborough ON M1J1H5

Between: Tulsi Ram Upadhyay Landlord

And

Donald Lee Tenants
Hyacinth Lee

Tulsi Ram Upadhyay (the 'Landlord') applied for an order to terminate the tenancy and evict Donald Lee and Hyacinth Lee (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.

This application was heard by videoconference on May 19, 2026.

The Landlord, the Landlord's support person, Laxman Subedi and the Tenants 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 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 duplex with a 3-bedroom unit on the main floor and a 2-bedroom unit in the basement. The Tenants reside in the Main Floor unit and they have resided there for almost 29 years.

4. On January 30, 2026, the Landlord gave the Tenants an N12 notice of termination deemed served on the same date with the termination date of April 30, 2026. The Landlord claims that they require vacant possession of the rental unit for the purpose of residential occupation for himself, his wife and their children.
5. In support of this application, the Landlord filed a declaration dated February 24, 2026 which complied with section 72(1) of the Residential Tenancies Act, 2006 (hereinafter referred to as the "Act") and the Landlord 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, Tulsi Ram Upadhyay (TU)

7. The Landlord testified that his wife and his kids really like the rental unit and very much want to move into it as their home residence. He currently resides in a 2-bedroom townhouse where he has been residing for 8 years but he requires more space as his daughter now has a baby.
8. He stated that his son is 24 and that his daughter is 26 and that if he moves into the 3-bedroom rental unit, he will have room for everyone. He stated that the rental unit has a more open concept and it is larger than the townhome.
9. TU stated that he owns one other property but it is not suitable for his current family needs.

Evidence of Tenant, Donald Lee

10. The Tenant testified that he and his wife have resided at the rental unit for almost 29 years. They are very settled and comfortable in the house and their medical doctors and therapists are very close by. The Tenant stated that he has to regularly attend a retina clinic in Toronto for injections in his eye because of a condition that he suffers from.
11. DL stated that both he and his wife suffer from type 2 diabetes and they both have to regularly meet with their diabetic doctors to ensure that the diabetes is closely monitored. He said that both he and his wife have to complete blood tests very regularly and that clinic is also close to the rental unit.
12. The Tenant stated that his wife works at Trilogy Age Care which is walking distance from their home.
13. DL stated that he and his wife have attempted to find other accommodations but even basement apartments start at \$2,200.00 plus utilities which the Tenants are not able to afford. He stated that it is financially impossible for them to pay a thousand dollars more per month for an apartment and he feels like he cannot afford to live anywhere else.

Analysis and Application of the Law

14. 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.
15. 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.
16. 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.
17. 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 and his family genuinely intend to move into the rental unit and occupy it for a period of at least one year.
18. 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)]
19. The Tenant did not challenge the Landlord's good faith in this application and the Landlord's evidence was not questioned by the Tenant.
20. On the basis of the evidence before the Board, I have no reason to doubt the truthfulness of the Landlord's testimony or his good faith intentions. I am therefore satisfied on a balance of probabilities that the Landlord served the N12 notice in good faith and he intends to reside in the rental unit for no less than one year.

Discretionary Relief from Eviction

21. 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.
22. According to section 83 of the Act, I am required to consider all the circumstances in the case including both parties' situations to determine if it would be appropriate to invoke section 83 relief.
23. I turned my mind to the circumstances of both the Landlord and the Tenants to determine the outcome of this tenancy.

24. The Landlord stated that his wife and adult children really like the rental unit and would like to move into the unit. The Landlord stated that he owned another property but did not say why he could not reside in that unit. Further, the Landlord owns two properties and rents a townhome currently which tells me that the Landlord is in a stronger, financial position than the Tenants.
25. The Tenants have been residing in this 3-bedroom apartment for almost 29 years and they are very established in the neighbourhood. The diabetic clinic and the lab are both close to the rental unit which is imperative for both Tenants who suffer from diabetes. The Tenant must also attend a retina clinic regularly which is close to their home.
26. The Tenants are currently paying \$1,253.28 per month for a 3-bedroom, main floor unit. The Tenants' financial limitations and their need to be close to their doctors would make finding another comparable unit literally impossible. This was evident when the Tenant told us about the basement apartment that he found which was \$1,000.00 more per month than their current apartment's rent.
27. The Landlord, in fact, has the option to remain at his townhome, move to his other property, perhaps find a bigger townhouse for his family to reside in or find another option. The Divisional Court's decision in *Caputo v. Newberg*, 2009 CANLII 32908 (ON SCDC) allows me to consider the Landlord's options for other places to live as part of my analysis under section 83. The Landlord's financial resources are also more substantial than the Tenants' financial situation. The Landlord has options while the Tenants have no options.
28. Having considered the totality of the facts that were disclosed at the hearing, I find that the unfairness to the Tenants of granting the application far outweighs the unfairness to the Landlord of denying the application and the Tenants would experience significant hardship if they were forced to move out of the rental unit. I find that the Tenants' medical, emotional and financial situations require that they be able to remain in the rental unit.
29. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1)(a).
30. The Landlord paid the Tenants compensation equal to one month's rent pursuant to s. 48.1 of the Act. The Tenants shall pay this money back to the Landlord because the application is denied. The Tenants will have until June 30, 2026 to pay this money back.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenants shall pay the compensation of \$1,253.28 back to the Landlord by June 30, 2026.

3. If the Tenants do not pay the Landlord the full amount owing on or before June 30, 2026, the Tenants will start to owe interest. This will be simple interest calculated from July 1, 2026 at 4.00 annually on the balance outstanding.

June 15, 2026
Date Issued

Carrie Bertrand
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.