



Order under Section 69 Residential Tenancies Act, 2006

Citation: GUTMAN v DA CUNHA, 2026 ONLTB 45473

Date: 2026-06-10

File Number: LTB-L-029516-26

In the matter of: BACK BASEMENT, 353 DOVERCOURT RD
TORONTO ON M6J3E4

Between: ILANA GUTMAN Landlord

And

JORGE DA CUNHA Tenant

ILANA GUTMAN (the 'Landlord') applied for an order to terminate the tenancy and evict JORGE DA CUNHA (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 May 26, 2026.

The Landlord's Legal Representative, Ravis Mohebbian, the Landlord and the Tenant attended the hearing.

Adjournment Request:

1. Prior to the commencement of the hearing, the Tenant requested an adjournment because he has just retained a paralegal from the legal clinic and that person told him to request an adjournment today. He stated that he has been trying to find assistance through his workplace because he cannot represent himself but he was not able to find help until yesterday. As the Tenant was served the N12 notice on March 23, 2026 and the Notice of Hearing had been sent to the parties a month ago, I denied the adjournment request.

Determinations:

2. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore,

the tenancy between the Landlord and the Tenant is terminated and the Tenant must move out of the rental unit on or before August 21, 2026.

3. The Tenant was in possession of the rental unit on the date the application was filed. The Tenant resides in the back basement unit.
4. On March 18, 2026, the Landlord gave the Tenant an N12 notice of termination deemed served on March 23, 2026 with the termination date of May 31, 2026. The Landlord claims that she requires vacant possession of the rental unit for the purpose of residential occupation for herself and her family.
5. In support of this application, the Landlord filed a declaration dated March 18, 2026 which complies with the requirements of section 72(1) of the *Residential Tenancies Act*, 2006, (hereinafter referred to as the "Act.").
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, Ilana Gutman (IG)

7. The Landlord testified that she purchased this property so that she and her family would be able to move into the home all together and live in a safe neighbourhood. She stated that the rental house contains a main house which has 4 bedrooms and 3 bathrooms and the back basement unit has 1 bedroom and 1 bathroom.
8. The Landlord stated that she currently resides on Foxley which is an area adjacent to Ossington Strip which is known as "party central" where she said people blare music, and broken bottles and needles are found on the streets. She stated that she does not feel safe residing there anymore and wants to get her children out of that area. Once she moves into the rental unit, she will sell her Foxley house.
9. IG stated that she has 3 daughters aged 13, 16, and 22 and that the 22-year-old requires her own, separate living quarters which will be the back basement apartment. She stated that she and her boyfriend intend to grow old together in this property.
10. IG stated that when she purchased the home, the main house was empty and that the Tenant resides in the back basement apartment. She stated that she tried to have conversations with the Tenant to negotiate his vacating of the apartment but that was not successful.

Evidence of Tenant, George Da Cunha, JDC))

11. The Tenant testified that he has resided in the rental unit since 2010 and that he has been an excellent Tenant and has always paid his rent on time. He stated that he told the Landlord not to purchase this house because he had no place to move to and that he was in debt, stressed out and anxious about the purchase.
12. JDC stated that the main house has tonnes of room and that the Landlord's family could easily live in the house without needing his rental unit. He stated that he had

conversations with the Landlord before she purchased the house and he told her that he has no place to go.

13. In cross-examination, the Tenant was asked if he believed that the Landlord and her family would be moving forward with their plans of using his apartment. The Tenant stated that he has no idea but that it is not necessary for him to move to allow the Landlord to move into the main house.
14. In cross-examination, the Tenant stated that he worked as a roofer but the work was variable due to the hard winter and not much work. When asked if he looked for other accommodations, the Tenant replied that he had not looked for other apartments because he told the Landlord not to buy the house.

Analysis and Application of the Law

15. 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.
16. 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.
17. 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.
18. 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 genuinely intends to move into the rental unit and occupy it for a period of at least one year.
19. 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)]
20. The Landlord testified in a straightforward manner at the hearing and her intention was clear that she wanted her family to use the entire house including the back basement apartment. The Landlord's evidence was not questioned or challenged by the Tenant when the evidence was provided. I found the Landlord's testimony credible.
21. The Tenant testified in a straightforward manner and he made it clear that he felt that the Landlord should not have purchased the property because he could not move out of his apartment. He did not suggest that the Landlord was bringing this application in bad faith

but instead stated that he simply was not financially able to vacate and that the Landlord did not require his apartment.

22. Based on the evidence and submissions provided, I am satisfied that the N12 Notice was given in good faith and that the Landlord has a good faith intention to reside in the rental unit for the purpose of residential occupation. Accordingly, I find that the requirements set out in subsection 48(1) of the Act have been met.

Compensation and Deposit

23. Based on the monthly rent, the daily compensation is \$21.60. This amount is calculated as follows: \$657.00 x 12, divided by 365 days.
24. There is no last month's rent deposit.
25. 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 postpone the eviction until August 21, 2026 pursuant to subsection 83(1)(b) of the Act. The Tenant has resided in the rental unit since 2010 and he has a very limited income which will make finding alternative accommodations difficult. I am hoping that by providing him with a 2-month delay it will allow him to reach out to social resources to assist him with his transfer to another rental unit. I believe that this delay is sufficient in these circumstances and limits the prejudice to both parties.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before August 21, 2026.
2. If the unit is not vacated on or before August 21, 2026, then starting August 22, 2026, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 August 22, 2026.
4. The Tenant shall also pay the Landlord compensation of \$21.60 per day for the use of the unit starting June 1, 2026 until the date the Tenant moves out of the unit.

June 10, 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.

In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on February 22, 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.