



Order under Section 69 Residential Tenancies Act, 2006

Citation: Thompson v Garcia, 2026 ONLTB 50131

Date: 2026-06-29

File Number: LTB-L-093662-25

In the matter of: MAIN FLOOR, 7 HIGHBOURNE RD
TORONTO ON M5P2J1

Between: Bernard Thompson Landlord

And

Ivan Garcia Tenants
Daniela Mirna Tabora

Bernard Thompson (the 'Landlord') applied for an order to terminate the tenancy and evict Ivan Garcia and Daniela Mirna Tabora (the 'Tenants') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchaser in good faith requires possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on February 11, 2026 and concluded on June 23, 2026.

The Landlord, the Landlord's Legal Representative, Joseph Behar, the Purchaser, Susan Chang, the Purchaser's Legal Representative, Sean O'Connor, the Tenants, and the Tenants' Legal Representative, Kathleen Lovett, attended the hearing.

I have considered all of the evidence presented at the hearing and all of the oral testimony, and 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.

Determinations:

Preliminary Issues:

Incorrect Landlord Name on the N12 Notice:

1. At the hearing, the Tenants' Legal Representative raised several preliminary issues, the first being that Bernard Thompson ('BT') is not the landlord for the rental unit as he is not

the person noted on the tenancy agreement. The parties do not dispute that an original lease agreement was signed on June 6, 2016, between the Tenants and BT's parents, Kenneth Thompson and Katherine Thompson. A copy of the Land Registry record dated November 4, 2025 was also submitted as evidence, showing BT and Katherine Thompson as owners of the residential complex.

2. Subsection 2(1) of the Residential Tenancies Act, 2006 ('Act') defines "landlord" to include:

(a) the owner of a rental unit or any other person who permits occupancy of a rental unit, other than a tenant who occupies a rental unit in a residential complex and who permits another person to also occupy the unit or any part of the unit,

(b) the heirs, assigns, personal representatives and successors in title of a person referred to in clause (a), and

(c) a person, other than a tenant occupying a rental unit in a residential complex, who is entitled to possession of the residential complex and who attempts to enforce any of the rights of a landlord under a tenancy agreement or this Act, including the right to collect rent; ("locateur")

3. I am satisfied that Bernard Thompson had standing to serve the N12 notice and be named the Landlord to the application as he falls under the statutory definition of "landlord" and was joint-owner of the property.

Disclosure of Prior N12 Notices

4. At the hearing, the Landlord's Representative confirmed that N12 notices had also been served for both the basement unit and 2nd floor unit of the residential complex at the same time as the N12 notice for the main floor unit was served on the Tenants, but they were erroneously not listed on the L2 application when filed. The Tenants Legal Representative argued that this prejudiced the Tenants as they would not have known the other N12 notices existed.

5. Subsection 71.1(3) of the Act states:

(3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

(a) indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and

(b) set out, with respect to each previous notice described in clause (a),

(i) the date the notice was given,

- (ii) the address of the rental unit in respect of which the notice was given,
 - (iii) the identity of the intended occupant in respect of whom the notice was given if the notice was given under section 48 or 49, and
 - (iv) such other information as may be required by the Rules.
6. The purpose of providing the Tenants with this information is for them to have as much disclosure as possible regarding the Landlord's good faith intentions and any previous attempts to regain possession of the unit.
7. The Tenants did not dispute that they had spoken to the other tenants in the residential complex after they were served with their N12 notice and were made aware that the other tenants had received notices as well. Therefore, I am satisfied that the Tenants did not suffer any prejudice by the Landlord's error in not disclosing the other N12 notices in the application as they were already well aware of them and their contents.

Incomplete Declaration

8. The Tenant's Legal Representative also raised the issue that the Purchaser's declaration is insufficient because it does not specifically state that her occupation of the rental unit would be in good faith. I accepted the application, despite the deficit declaration, because the Tenants clearly received notice of who was moving in, and the Purchaser was present at the hearing for cross examination about their good faith and the discrepancy. Therefore, there was no procedural unfairness in proceeding nor significant prejudice to the Tenants' ability to participate.

Purchaser's Presence During the Proceedings

9. At the hearing, the Tenants' Legal Representative raised the issue of the Purchaser being present in the hearing room prior to testifying. I did not find the Purchaser's presence a hinderance to procedural fairness. The N12 notice was served on behalf of the Purchaser, and the parties do not dispute that the sale of the residential complex closed on November 7, 2025, and the Purchaser took possession of the residential complex as the new Landlord. Therefore, I found it appropriate to allow the Purchaser to remain in the hearing room.

Witness Summons for the Purchaser's Child:

10. At the hearing, the Landlord's Legal Representative raised the issue of the Purchaser's 13-year-old child being summoned to testify at the hearing in regards to the N12 notice that was served to the basement tenant. He argued that the testimony was irrelevant as the application is for a different unit that has since been vacated by the other tenant, and the summons was essentially a method of intimidation.
11. The Tenants' Legal Representative argued that all three units in the house were served with N12 notices, the basement N12 specifically stating that the Purchaser's then 12-year-

old son would move into a two-bedroom unit alone. His testimony was relevant for context about the Purchaser's overall intention for all three units.

12. Having heard the parties' submissions, I was not satisfied that the testimony of the Purchaser's son was necessary. There is nothing inherently wrong with calling a child witness to testify at a hearing. The issue was whether the testimony would garner redundant information that would likely also be provided by the Purchaser herself. While the son's testimony may have been relevant, I was not satisfied that it would not be unduly repetitive of the Purchaser's testimony. The Board has an obligation to adopt the most expeditious method for its proceedings; consequently, I found it was not necessary for the Purchaser's son to testify.

L2 Application:

13. 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.
14. The Tenants were in possession of the rental unit on the date the application was filed.
15. On September 29, 2025, the Landlord gave the Tenants an N12 notice of termination deemed served that same day with the termination date of November 30, 2025. The notice was given on behalf of the Purchaser who claims that they require vacant possession of the rental unit for the purpose of their own residential occupation.
16. The residential complex is described as a detached house divided into three units: the basement, main floor, and 2nd floor units. The rental unit is the main floor unit and contains three bedrooms and one bathroom.
17. The Landlord testified that at the time he served the N12 notice to the Tenants, he believed that the Purchaser intended to occupy the unit. The Landlord testified that he was told by the realtor that the Purchaser would occupy the main floor unit, her mother would take the 2nd floor unit, and her son would occupy the basement unit. The Landlord was not aware that the Purchaser's son was only 12 years old at the time. The Landlord confirmed on cross-examination that he had never met the Purchaser before selling the house and never spoke to her before service of the N12 notice; however, based on the information he was given and the signed APS, he had no reason to believe the Purchaser and her family would not move into the unit when he served the N12 notice. He initiated the N12 notice and L2 application in good faith with the information known to him at the time.
18. A copy of the Agreement of Purchase and Sale ('APS') for the residential complex signed by the Landlord and Purchaser on September 20, 2025 was submitted as evidence. The Landlord confirmed that there is no additional provision in Schedule A of the APS that specifically states that the Purchaser intends to move into the residential complex; however, there is a clause stating that upon acceptance of the offer, the Landlord is to immediately serve all occupants of the property with N12 notices and to pursue vacant possession of the property in good faith.
19. The Purchaser testified that she bought the residential complex so that she, her mother, and her son could live in the house. She confirmed that both the basement and 2nd floor units are currently vacant. The Purchaser testified that she and her family do not want to

move into the house until there is vacant possession of all units as they do not want to live in a house with strangers.

20. The Purchaser clarified that her son will not be living in the basement unit but rather with her in the main floor unit; however, her son would still be the primary user of the basement unit for recreational purposes. Her mother is still to occupy the 2nd floor unit. The Purchaser is prepared and willing to move into the unit within a week after being given vacant possession. On cross-examination, the Purchaser was shown Board order LTB-L-093669-25, which granted the application to evict the tenants of the 2nd floor unit of the same residential complex for the residential occupation of the Purchaser's mother. Paragraph 7 of that order states that the Purchaser's intention relayed at the hearing on February 12, 2026, was for her son to occupy the basement unit. The Purchaser explained the discrepancy as a misunderstanding of what needed to be checked off on the N12 notice for the basement unit, and it was always her intention for her family to occupy/use the entire house.
21. The Purchaser testified that she currently lives in a downtown condo with her son, and her mother lives in a different condo four floors below in the same residential complex. The Purchaser confirmed that she has sold her condo through a private sale with an original closing date of June 1, 2026; however, due to the length of these proceedings, she was able to get an extension to September 1, 2026. When asked to produce a copy of the APS for her condo at the hearing, the Purchaser stated she did not have a copy readily available. I offered to stand the matter down briefly for the Purchaser to locate and upload the document, but the Purchaser declined, stating she would not be able to produce it in time and was not aware that the document would be needed for the proceedings.
22. The Purchaser was then asked to explain the mortgage amount listed as a charge against the property. A copy of the property register was submitted at the hearing showing a mortgage charge against the property for \$2,325,000.00, when the property itself was only sold for \$1,860,000.00; the implication being that this was actually a commercial mortgage for use on an investment property. The Purchaser disputed the mortgage amount and stated she could not explain why that number appeared as the registered charge.
23. Though the parties dispute how many times the Purchaser attended the property both prior to and after completing the sale, the Purchaser confirmed that she did bring four contractors with her for each visit on at least two occasions. She testified that the contractors were there to provide estimates regarding any work that needed to be done to the property. The Purchaser has ultimately decided that she will be doing only minor renovations to the main floor unit. When asked on cross-examination about not remedying the mold in the basement, the Purchaser contested the existence of any mold or the need for repairs to the basement as a result.
24. The Tenants maintained that the Purchaser does not genuinely intend to move into the unit, but rather extensively renovate the property and re-rent the units for higher amounts. The Tenants believe this mainly due to the alleged commercial mortgage charge listed on the property, the Purchaser's inconsistencies regarding her son's occupation of the basement unit, the multiple contractors visiting the unit on multiple occasions, and the Purchaser's flippant remarks when visiting the unit and criticizing the number of

bathrooms. The Tenants reiterated that they have lived in the unit for 10 years, and if they were evicted, the Purchaser could easily re-rent the unit for a higher price.

Analysis:

25. I note that although the order evicting the 2nd floor tenants (LTB-L-093669-25) is not binding on me, I have taken it into consideration for the purposes of this order with the context that it was for a different tenancy and different unit within the same residential complex.
26. Under section 49 of the Act, the Landlord must prove on a balance of probabilities that:
 1. the residential complex contains three or fewer units.
 2. the Landlord has entered into an agreement of purchase and sale of the residential complex.
 3. the purchaser in good faith requires possession of the rental unit for the purpose of their own residential occupation.
27. The first part of the test is met. The residential complex contains three units.
28. The second part of the test is also met. The Landlord and Purchaser signed the APS on September 20, 2025, and the sale was completed on November 7, 2025.
29. The issue here is with the third part of the test. As stated in the case of *Elkins v. Van Wissen*, 2023 ONCA 789, the vendor landlord's conduct is linked to the purchaser's good faith. Subsection 49(1) of the Act permits the vendor landlord to, on behalf of the purchaser, give the tenant a termination notice so long as the purchaser, in good faith, requires possession of the rental unit for the purpose of residential occupation. In this case, the Landlord entered into a signed agreement with the Purchaser that included a clause obligating the Landlord to serve N12 notices in good faith for the property, and the Landlord executed this obligation in accordance with the information he was given at the time from the realtors. However, while I am satisfied the Landlord served the N12 notice in good faith, I am not satisfied that the purchaser requires vacant possession of the rental unit for the purpose of their own residential occupation for the reasons set out below.
30. The Purchaser only clarified that her son was never meant to occupy the basement unit but rather would live with her in the main floor unit at the June 23, 2026 hearing. The Purchaser was therefore aware of this when the basement unit for the triplex was served with their N12 notice. I am not satisfied that the Purchaser's explanation of there simply being a misunderstanding regarding the intended use of the N12 notice is sufficient, given that the Purchaser had legal representation during this time, the Purchaser confirmed her son's intended use of the basement unit in the Board's order LTB-L-093669-25 for the 2nd floor unit, and there was no mention of any further clarification sent to the Landlord regarding who was to occupy which unit prior to when he served the N12 notices for each unit or afterwards. The Landlord's Legal Representative also confirmed at the hearing that the L2 application based on the N12 notice for the basement was withdrawn, not because of the misleading N12 notice, but because the tenant vacated the unit on their own. Consequently, the N12 notice for the basement unit was served in bad faith, and I find

these contradictory actions and explanations to be detrimental to the Purchaser's credibility.

31. While this application is for the main unit, section 202 of the Act and the reasoning in *Fava v. Harrison* 2014 ONSC 3352 (ONSC DC) allow me to draw inferences regarding good faith from the conduct and motives of the parties. The basement unit is part of the residential complex the Purchaser seeks to occupy with her family and is therefore considered with respect to the Purchaser's overall intention for the use of the property that includes the main floor rental unit.
32. I was also not persuaded by the Purchaser's replies on cross-examination regarding the mortgage charge listed against the property. The Tenants proposed that it is actually a commercial mortgage given for an investment property that would likely need renovations. The Purchaser confirmed that at least eight different contractors attended the property to provide her with estimates for possible renovations and property valuations. When the Purchaser was given the opportunity to speak to the mortgage amount (which would likely include funds to renovate the property) and produce any counter evidence, her reply was that she could not explain the amount seen on the property register and had never seen the charge document before the Tenants' Legal Representative disclosed it a week before the hearing. The Purchaser testified that she did not have her mortgage documents readily available to dispute the property register charge, because she did not think they would be necessary, despite having seen the Tenants' disclosure prior to the hearing.
33. The Purchaser also testified that she needs to move into the rental unit because she has already sold her current home and had to get an extension on the closing date to accommodate the LTB proceedings. However, the Purchaser could not produce the APS agreement for that sale, even after being given the opportunity to stand the matter down to upload it. Again, the Purchaser's reasoning was that she was not aware that the document would be needed as evidence. This is the Landlord's application on behalf of the Purchaser to evict the Tenants from their home. Part of the Purchaser's genuine intention to occupy the rental unit is based on her need to move in because she has already sold her home. A copy of that APS agreement to substantiate that claim was available and expected evidence for the hearing.
34. Consequently, based on the totality of the evidence submitted, and given the inconsistencies and gaps in the Purchaser's evidence, I am not satisfied on the balance of probabilities that the Landlord has shown the Purchaser genuinely intends to occupy the rental unit. Therefore, the third element of the test in section 49 of the Act has not been met, and the application must be dismissed.
35. The Landlord has compensated the Tenants an amount equal to one month's rent (\$2,580.86) by November 30, 2025. The Landlord is therefore entitled to the return of that compensation due to the application being dismissed.

It is ordered that:

1. The application is dismissed.

2. The Tenants are to return to the Landlord the compensation payment provided to them with respect to this application on or before July 10, 2026.
3. If the Tenants do not return the compensation, they will owe interest on the amount. This will be simple interest calculated from July 11, 2026 at 4.00% annually on the balance outstanding.

June 29, 2026

Date Issued

Fotoula Hatzantonis

Member, Landlord and Tenant Board

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