

Order under Section 69  
**Residential Tenancies Act, 2006**

**File Number:** TNL-05995-18

FD (the 'Landlord') applied for an order to terminate the tenancy and evict JL (the 'Tenant') because the Landlord requires possession of the rental unit for the purpose of residential occupation. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard in Toronto on July 23, 2018.

The Landlord and the Landlord's representative, CS attended the hearing. The Tenant attended the hearing and was self-represented.

The Landlord and the Tenant testified at the hearing.

The Landlord called as a witness, her daughter, NN.

**Determinations:**

1. Pursuant to section 48.1 of the *Residential Tenancies Act, 2006*, (the 'Act'), a landlord who has served a Form N12 Notice of Termination is required to give the tenant compensation in the amount of one month of rent. Section 55.1 of the Act requires a landlord who is obligated to give compensation to a tenant under s.48.1 to pay that compensation no later than the termination date in the N12 notice. In this case the termination date is August 31, 2018. The Act does not speak to how this compensation is to be paid.
2. It was the evidence before me that the Tenant has not paid the rent for June 2018 but has paid the rent for July 2018. To meet the requirement of section 48.1, the Tenant's arrears of rent shall be reduced by one month's rent, in satisfaction of the Landlord's obligation to pay compensation to the Tenant of one month's rent.
3. The issue to be determined by the Board is whether the Landlord has satisfied the "good faith" requirement set out in subsection 48(1) of the *Residential Tenancies Act, 2006*, (the 'Act') which provides: 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 by,
  - (c) a child or parent of the landlord...
4. The rental unit is one bedroom, plus den, located in a condominium building. This is a month to month tenancy and the rent is due on the first day of each month.
5. It was the evidence of the Landlord that she lives in a two bedroom condominium unit with her two daughters, ages 18 and 24. The Landlord shares a bedroom with her older

daughter and they sleep in the same bed. The Landlord testified that the living space is too tight. The Landlord's daughter, NN returned from Korea in October 2017 and wanted to move into the unit, but she could not because the Tenant was living in the unit. NN is currently not working and will not pay rent until she starts working. NN will get a roommate to share the living expenses of the unit.

6. It was the evidence of the Landlord's daughter, NN that she currently lives with her mother (Landlord) and her sister in a two bedroom unit. She has been sharing a room with her mother for ten months and finds it very cramped and their schedules clash. She no longer wants to sleep in the same bed as her mother. She was living in South Korea for a year and teaching. When she returned from South Korea she wanted to find a job so she could move out. However, she has not found a job and Toronto has become very expensive. Once she finds a job, she will be paying rent and is looking for a roommate to share the rent.
7. The Tenant sought to challenge the validity of the notice of termination and believed that the notice was not given in good faith.
8. It was the evidence of the Tenant that the Landlord is trying to increase the rent and their relationship soured. The Tenant says that he needs more time to move out of the unit and he thinks that the Landlord's daughter is moving into the unit.
9. In the leading case law involving a landlord's own use application, *Salter v. Beljinac*, [2001], O.J. No. 2792 (Div. Ct.). the Divisional Court held that:

the test of good faith is genuine intention to occupy the premises and not the reasonableness of the landlord's proposal...
10. The case law in this area establishes that the test is determined by considering the intention of the person named in the application. If that person genuinely intends to reside in the unit then the notice is given in good faith.
11. Based on the evidence adduced at the hearing, I am satisfied that the Landlord's daughter genuinely intends to move into the rental unit. I have no reason to doubt that NN was not being forthright about her intentions to move in and live in the unit. I find it reasonable that NN at the age of 24 would want to live on her own and not share a room with her mother. I was not persuaded by the Tenant's evidence that the Landlord wants him to move out so she can raise the rent. Therefore, I am satisfied the Landlord has met the "good faith" requirement set out in subsection 48(1) of the Act.
12. The Tenant requested until September 30, 2018 to move out of the unit. The Tenant is a manager of a gym and has a monthly income of almost \$3,000.00. He has lived in the unit for almost three years. The Tenant says that for the past month he has been looking for a new place to live.
13. The Landlord opposed any delay in terminating the tenancy and submitted that the Tenant has already been given sixty days.

14. 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 the eviction until September 30, 2018 pursuant to subsection 83(1)(b) of the Act. I considered the length of the tenancy and that the Tenant has been looking for a new place. I also considered that the Landlord's daughter is living with the Landlord and I was not persuaded that it was urgent that she move into the unit on September 1, 2018.

**It is ordered that:**

1. The rent for June 2018 shall be waived, in satisfaction of the Landlord's obligation to pay compensation to the Tenant of one month's rent.
2. The tenancy between the Landlord and the Tenant is terminated, as of September 30, 2018. The Tenant must move out of the rental unit on or before September 30, 2018.
3. If the unit is not vacated on or before September 30, 2018, then starting October 1, 2018, 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 October 1, 2018.
5. If the Tenant does not move out of the unit on or before September 30, 2018 the Tenant shall pay to the Landlord \$60.82 per day for compensation for the use of the unit from October 1, 2018 to the date the Tenant moves out of the unit.

**July 26, 2018**

**Date Issued**

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Debbie Mosaheb

Member, Landlord and Tenant Board

Toronto North-RO

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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 April 1, 2019 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.