

Landlord or Close Family Member Must Intend to Occupy for At Least One Year



When a landlord seeks to evict a tenant for the 'own use' of the Landlord, including certain close family members, the landlord must genuinely possess a good faith intent to do so; and to do so for a period of at least one year. This good faith requirement ensures that a Landlord is precluded from using the 'own use' process under false pretences, such as where a Landlord may prefer to evict a tenant and then re-lease at a higher rent to a fresh tenant. Of course, reading the mind of the Landlord so to determine whether intentions are pure is an impossibility and therefore where there is a hearing at the [Landlord Tenant Board](#) the challenge for the adjudicator is to gauge whether the good faith requirement is genuine. Per the case of *HOL-0238818 (Re)*, [2018 CanLII 111837](#):

13. The obligation of the Board in considering applications for Landlord's own use is to consider the circumstances of each case in relation to the criteria laid out by the leading cases of the Divisional Court:

Beljinac v. Salter, [2001 CanLII 40231 \(ON SCDC\)](#), [2001] O.J. No. 2792 (Div. Ct.), ("*Salter*") when referring to Justice Steele's reasons in *Feeney v. Noble (1994)*, 19, O.R. (3d) (Div. Ct.), stated that:

"...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord's proposal."

And in the more recent decision of *Fava v. Harrison*, [2014 ONSC 3352 \(CanLII\)](#) the Divisional Court, in considering this issue in the context of the Act found as follows:



“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

As such, the reason why the Landlord is seeking to occupy the rental unit is, generally, irrelevant and only the intent to occupy is under consideration; however, as indicated, the 'conduct and motives' of the Landlord may be indicators as to the truth of a stated intent to occupy.

Where certain facts fail to jive or where it is demonstrable that the landlord is untruthful about various things, such dishonourable conduct may be a strong indicator that the stated 'intent to occupy' is similarly disingenuous.