



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

Citation: Barretto v Tabak, 2023 ONLTB 68466

Date: 2023-10-18

File Number: LTB-L-031615-23

In the matter of: A, 42 PARK AVE
GEORGETOWN ON L7G3H8

Between: Rebecca Barretto

And

Louis Tabak
Liz-ann Tabak

I hereby certify this is a
true copy of an Order dated
OCT 25 2023
Landlord and Tenant Board

Landlord

Tenant

Rebecca Barretto (the 'Landlord') applied for an order to terminate the tenancy and evict Louis Tabak and Liz-ann Tabak (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to demolish the unit.

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 August 28, 2023.

The Landlord and the Landlord's Legal Representative, D. Schofield and the Tenant attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On April 14, 2023, the Landlord gave the Tenant an N13 notice of termination with the termination date of August 31, 2023. This notice was mailed to the Tenant, so it was deemed served as of April 19, 2023. The Landlord claims vacant possession of the rental unit is required for demolition.

Landlord's evidence

4. The Landlord testified that she came to own the unit in February 2022. Her insurance company requested to inspect the unit and the inspection took place on March 25, 2023.

5. The Landlord was advised by her insurance company that they required the permits from the city to demonstrate that the complex was registered as a multi residential complex. The Landlord contacted the City to obtain a copy of the paperwork required by her insurance company and was informed at that time that the complex was not registered as a two-unit dwelling.
6. The Landlord submitted a letter from the Town of Halton Hills dated April 13, 2023. The letter informs the Landlord that failure to register the unit as a two-unit dwelling may result in the Town pursuing legal action against the Landlord.
7. The Landlord testified that it is not feasible for her to register the unit as a two-unit dwelling because of financial constraints.
8. The Landlord testified that the Tenant was originally served with an N12 notice of termination, but when they received information from the town about the unit not being registered as a 2 unit dwelling, they then served the Tenant with an N13 notice of termination.
9. The Landlord's husband testified. He is a contractor and will be performing the work in order to demolish the Tenant's unit and bring the complex into compliance as a single-family dwelling. Plans and permits were submitted into evidence. The work involves creating a doorway on a structural wall. He testified that the doorway will be added where the Tenant's kitchen currently is.

Tenant's Evidence

10. The Tenant did not specifically contest that the Landlord would not demolish the rental unit. He testified that he believes he was served with the N13 notice of termination after the Landlord illegally increased the rent.
11. The Tenant testified that the Landlord increased the rent from \$1,200.00 to \$1,500.00 in October 2022. He testified that in January, the Landlord tried to increase the rent to \$2,000.00, but the Tenant never paid the \$2,000.00. The Tenant paid the increased amount to \$1,500.00 until February 2023. The Landlord paid the Tenant back the difference in the illegal rent after realizing that the increase was not legal.
12. The Tenant testified that the Landlord served an N12 notice of termination to the Tenant after the discussion took place about raising the rent again to \$2,000.00. The Tenant testified that the Landlord would not have served the N12 had he paid the increase.
13. The Tenant testified that he received the N13 notice of termination in April 2023, and a letter advising that N12 notice of termination was rescinded.

Analysis

14. This application is brought under section 50 of the *Residential Tenancies Act, 2006*, which states:

Notice, demolition, conversion or repairs

50 (1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,

- (a) demolish it;
- (b) convert it to use for a purpose other than residential premises; or
- (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit. 2006

15. In this case, the N13 notice of termination was served because the Landlord plans to demolish the rental unit. The Landlord submitted the necessary permits and the plans into evidence.
16. Based on the evidence before me, I find on a balance of probabilities, that the Landlord requires the rental unit to be vacated because the Landlord in good faith intends to demolish it. I am satisfied that the Landlord has obtained the necessary permits for this work.
17. I do not find that the Landlord only served this notice because the Landlord wanted to raise the rent. Although I accept that there was an illegal rent increase, the Landlord became aware that the increase was illegal and paid the Tenant back the difference. The Tenant testified that it was when he declined to pay a second increase in rent, that he received an N12 notice of termination for the Landlord's personal use. I do not find that that was the motivating factor behind the N13 notice. The N13 notice was served once the Landlord was advised by the Town that the unit was not registered as a two-unit dwelling, and that the city would commence legal action if it was not registered as such. The Landlord does not have the financial means to do what is necessary to register it as a two-unit dwelling, therefore, it must be converted back to a single-family dwelling.

Relief from eviction


18. The Tenant lives in the unit with his wife and their adult child and her husband. He testified that since receiving the notice, he has looked at other units, but rent is unaffordable for comparable units. The Tenant has lived in the unit since 2002.
19. The Tenant requested 90 days to vacate the rental unit.
20. The Landlord's Legal Representative requests a standard order. He submits that the Tenant has known about the Landlord's intentions for the unit since at least April. He submits that the Landlord is subject to legal action from the city if the unit is not converted back to a single family dwelling.
21. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act. This is a long-standing tenancy, the Tenant has lived in the unit for 21 years. I find that a

delay beyond the standard 11 days is warranted in the circumstances. I am mindful of the consequences to the Landlord but I must also balance the Tenant's circumstances as well.

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 November 30, 2023.
2. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, 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 December 1, 2023.

October 25, 2023
Date Issued



Emily Robb
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 June 1, 2024 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.