

The Kitchen Cupboard and Icebox Inc. v Brooker-Illman, 2022 CanLII 80836 (ON LTB)

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Tribunals Ontario
Landlord and Tenant Board

Order under Section 69

Residential Tenancies Act, 2006

File Number: SWL-52679-21

In the matter of: 325 WALLACE AVENUE N LISTOWEL ON N4W1L2

Between: The Kitchen Cupboard and Icebox Inc. Landlord

and
Michelle Brooker-Illman Tenant

The Kitchen Cupboard and Icebox Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Michelle Brooker-Illman (the 'Tenant') because the Landlord intends to convert the rental unit to a non-residential use. The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by video conference on November 12, 2021.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Kirsten Maczko and the Tenant was represented by Aron Van de Kleut. Evidence was provided by the Landlord and the Tenant.

At the end of the hearing on November 12, 2021, I permitted the parties to make written submissions within five days. On November 17, 2021, Ms Maczko wrote to me asking if the parties could have until December 3, 2021 to make written submissions because they were attempting to settle the matter. I granted that request. No written submissions appear to have been received

from Ms Maczko or Mr. Van de Kleut and there is no indication on CMORE that the matter was settled. I am, as a result, making this order without the benefit of written submission.

Determinations:

1. On June 26, 2021, the Landlord served an N13 notice with a termination date of October 31, 2021. This application was filed on July 5, 2021.
2. The parties agree that all of the technical requirements of the *Residential Tenancies Act, 2006* (the 'Act') in terms of the notice and the payment of compensation to the Tenant have been satisfied.
3. Pursuant to a consent order that was made in SWL-45399-20 on June 24, 2021, the lawful monthly rent for the rental unit is \$704.29, but a prompt payment discount reduces

that to \$690.00. It is my understanding that the monthly rent payable by the Tenant is \$690.00

4. I am satisfied that the Landlord requires the rental unit to be vacated by the Tenant in order to convert it to a non-residential purpose. The Landlord wishes to use the rental unit for commercial purposes and, in particular, for purposes related to her growing housewares business and for storage. The unit is zoned for commercial use. While the Landlord intends to make changes to the rental unit, there was no evidence that this work requires permits or other authority.
5. The Landlord freely conceded that she is not happy with the tenancy and there have been issues collecting rent and utilities from the Tenant such that the relationship between the Landlord and the Tenant has 'fallen apart'. The Landlord also conceded that the market rent of the rental unit is about \$930.00. I have considered this evidence in finding that the Landlord in good faith intends to convert the rental unit to a commercial purpose such that she satisfies the requirement of paragraph 50(1)(b) and section 73 of the *Residential Tenancies Act, 2006* (the 'Act').
6. There was no evidence that the Landlord had any urgent need for the rental unit.
7. The Tenant moved into the rental unit in August of 2016. She has one teenage daughter who lives with her in the unit.
8. The Tenant has a medical condition.
9. The Tenant has applied for disability benefits and is currently receiving assistance from Ontario Works. She is anticipating returning to the workforce when she is medically able to do so.
10. I appreciate that, based on her medical condition, the Tenant will need additional time and assistance to pack her belongings and move, but I do not believe, based on the evidence, that the Tenant's medical condition is such that fairness would dictate that I deny eviction. Instead, I find that it is appropriate to provide the Tenant with additional time to vacate the rental unit.
11. The Tenant indicated that she has begun the process of packing her belongings in preparation to move. While she indicated that she cannot afford to hire movers and her daughter is not

available to assist very much, the Tenant's evidence was that she has family and friends that are willing to assist her, and that have in fact been assisting her to pack her belongings. There was no evidence that the Tenants have requested assistance or accommodation from the Landlord.

12. The Tenant indicated that she has been looking for alternate rental accommodations, but cannot afford to pay market rent. She also indicated that she had made inquiries with respect to subsidized housing, but was told that subsidized housing was not a viable option given the length of the waiting list. The Tenant indicated that her current plan is to

purchase a trailer in which she can live and is actively looking for one. She further indicated that she has a place to put a trailer once she finds one and has the ability to move a trailer to that location.

13. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and, as noted above, find that it would not be unfair to postpone the eviction until March 31, 2022, pursuant to subsection 83(1)(b) of the Act.

14. The Tenant indicated during direct examination that she believed that this application was brought in retaliation for a prior dispute she had with the Landlord. In particular, she asserted that this application was in retaliation for the consent order that was made in SWL-45399-20. While there was no direct reference to this provision of the Act, I take from this line of questioning that the Tenant is asking me to deny the Landlord's application based on paragraph 83(3)(c) of the Act.

15. The Tenant asked a few general questions with respect to whether the Landlord was happy with the tenancy, but no questions were asked with respect to any connection between this application and any attempt(s) by the Tenant to secure or enforce her legal rights.

16. Aside from the timing of the consent order made in SWL-45399-20 and the serving of the N13 notice that resulted in this application, there is, in my view based on the evidence, no readily-apparent connection between this application and any attempts by the tenant to secure or enforce her legal rights. It is not even clear to me what legal rights the Tenant was attempting to secure or enforce in SWL-45399-20 that resulted in the consent order that was made on June 24, 2021. Timing alone is not sufficient to establish that an application has been brought because a tenant has attempted to secure or enforce his or her legal rights so as to trigger paragraph 83(3)(c) of the Act.

17. At the end of the hearing, after the evidence was submitted, the Landlord indicated that there was a request pending to evict the Tenant based on a breach of the consent order made in SWL-45399-20, but there was no information before me on that request and the issue was not before me.

18. The Landlord collected a rent deposit of \$675.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenant for the period from July 1, 2021 to October 31, 2021.

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 March 31, 2022.

2. To the extent that she has not already done so, the Tenant shall pay to the Landlord \$1,162.26, which represents compensation for the use of the unit from November 1, 2021

to January 20, 2022, less the rent deposit and interest the Landlord owes on the rent deposit.

3. To the extent that she has not already done so or does not do so, the Tenant shall also pay to the Landlord \$22.68 per day for compensation for the use of the unit from January 21, 2022 to the date the Tenant moves out of the rental unit.

4. If the Tenant does not pay the Landlord the full amount owing on or before March 31, 2022, the Tenant will start to owe interest. This will be simple interest calculated from April 1, 2022 at 2.00% annually on the balance outstanding.

5. If the unit is not vacated on or before March 31, 2022, then starting April 1, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.



6. 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 April 1, 2022.

January 20, 2022

Date Issued

Member, Landlord and Tenant Board

E. Patrick Shea

South West-RO

150 Dufferin Avenue, Suite 400, 4th Floor London ON N6A5N6

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 August 1, 2022 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.