Order under Sections 30, 31 and 69
Residential Tenancies Act, 2006

Citation: Redmond v King, 2024 ONLTB 2584
Date: 2024-01-08
File Numbers: LTB-L-059232-22
LTB-T-037934-22

In the matter of: A-232 CAROLINE ST SOUTH, 142 CHARLTON AVE W HAMILTON ON L8P2C7

Between: Christopher Redmond
Christine Larabie — Landlords

And

Matthew King — Tenant

I hereby certify this is a true copy of an Order dated
JAN 08. 2024
Landlord and Tenant Board

Christopher Redmond and Christine Larabie (the 'Landlords') applied for an order to terminate the tenancy and evict Matthew King (the 'Tenant') because:

- the Landlords require possession of the rental unit in order to convert the unit to a non-residential use (LTB-L-059232-22).

Matthew King (the 'Tenant') applied for an order determining that Christopher Redmond and Christine Larabie (the 'Landlords'):

- substantially interfered with the reasonable enjoyment of the rental unit or residential complex by the Tenant or by a member of their household.
- harassed, obstructed, coerced, threatened or interfered with the Tenant (LTB-T-037934-22).

Matthew King (the 'Tenant') applied for an order determining that Christopher Redmond and Christine Larabie (the 'Landlords') failed to meet the Landlords' maintenance obligations under the *Residential Tenancies Act, 2006* (the 'Act') or failed to comply with health, safety, housing or maintenance standards (LTB-T-037934-22).

These applications were heard by videoconference on August 24, 2023, October 5, 2023, and November 17, 2023.

The Landlords, Christine Larabie (‘CL’) and Christopher Redmond (‘CR’), the Landlords’ legal representative, Elaine Page (‘EP’), the Tenant, and the Tenant’s legal representative, Paul Startek (‘PS’), attended the hearing on each of the hearing dates.

Determinations:

L2 Application

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy.
2. On August 26, 2022, the Landlords gave the Tenant an N13 notice of termination with the termination date of December 31, 2022 ('N13 notice'). The Landlords claim vacant possession of the rental unit is required for conversion to a non-residential use. In particular, the N13 notice states that the rental unit will be converted to a space for commercial occupancy.
3. Rent is due on the first day of the month, and the tenancy was month-to-month when the N13 notice was given.

Landlords' Evidence – CR (L2 Application)

4. CR said the residential complex presently contains 4 residential units and 2 commercial units. The two commercial units, like the rental unit are at ground level. There is a residential unit above the rental unit, and two other residential units in an attached building.
5. CR said the property is zoned "C1", which is a neighbourhood commercial zone, allowing for a main floor unit with street access to be used as either commercial or residential.
6. CR acknowledged that there was a fire at the residential complex on December 31, 2021 (see below). The Tenant was required to vacate the rental unit because of the extent of the damage from the fire, and he has not returned. He said that the Landlords' plan was to convert the rental unit to commercial use even before the fire, but as of that time, they did not yet have plans drawn up and had not given the Tenant a notice of termination.
7. He said that after the fire, once the Landlords learned that the required repairs would be extensive, and the unit would have to be "taken to the studs", it seemed to be a practically and economically prudent time to convert the unit, because it would have to be taken back to its shell anyway. He said this decision was made in about May or June 2022.
8. He said that the Landlord engaged "R & R Designs" to determine what the space could be used for and to draw up plans. The one stipulation was that street access is required, so a new door would have to be installed.
9. CR entered as evidence a copy of the plans prepared by R & R Design (DOC-1229890). The plans show a commercial layout within the rental unit demising walls. The plans are stamped at the top right corner by the City of Hamilton Building Division, signed by George Wong on April 26, 2023, citing permit number 22 153125 000 00 C3.
10. CR said the permit is still alive, is good for 18 months from April 26, 2023, and if the work is not done by then he would have to apply for an extension.
11. CR said the kitchen was removed after the fire, and not reinstalled. He said the bathroom was not removed because it was needed for the permit, so it was left in place. He said the bedroom is no longer there because the closet has been removed.
12. CR said there is no commercial tenant lined up, but he has had interest. He said that he had one commercial tenant who would have signed, but did not want to do so before the LTB process is complete. He said that prospective tenant was a massage therapist, and he has also had interest from a legal clinic, a physiotherapist, and others.

13. CR said that to date, with the plans and fees the Landlords have paid to the City, they have paid over $10,000.00 toward the conversion. He said that by the time everything is finished, the conversion will likely cost between $35,000.00 and $50,000.00.
14. When asked if the conversion is simply an attempt to end the Tenant's tenancy, CR said that is not the case, and reiterated that this has been the plan since the Landlords found out about the zoning a few years ago. He said it is not about the Tenant, and it is a business decision.
15. CR said he has a contractor lined up to complete the necessary work, and the plan is to complete the work and rent the unit to a commercial tenant as soon as possible.
16. CR said that he received rent payments from the insurer (due to the fire) up to March 2023, but nothing since then.
17. CR said the two other commercial units in the building are used by the Landlords. One is a coffee shop and the other is a bottle shop/local bar.
18. On cross-examination, the CR acknowledged that he gave a previous N13 notice to the Tenant to convert the rental unit from a one bedroom to a two bedroom to match the upper unit, but did not proceed with it. He said this was in 2017, before the C1 zoning for the property was in place.
19. CR also acknowledged that he has been aware since the fire occurred that the Tenant wished to move back into the rental unit.
20. CR was referred to an email exchange between himself and the Tenant between August 23 and 30, 2022 (DOC-996487, p. 32). On August 23, 2022 the Tenant emailed the Landlord asking for an update about the restoration of the rental unit after the fire. CR responded on August 30, 2022 saying there have been no updates since they last communicated in April 2022 due to some delays with building permit issuance. It also notes that since the Tenant had commenced a legal proceeding, the Tenant should get updates through his legal representative. It says that the Tenant's legal representative had been updated by the Landlord's representative about the "current situation and what future timelines/plans are". CR said that he had already advised the Tenant that communication should be through the parties respective legal representatives.
21. CR confirmed that the N13 notice was served three days after the Tenant's August 23, 2022 email, and four days before CR's August 30, 2022 email.
22. CR confirmed that the Landlords charged and received rent from the Tenant for the months of January to April 2022. He said that he was told by his insurer to do so, but later returned theses funds to the Tenant when the Tenant requested their return. He said he has since received a lump sum payment from his insurer for lost rent for the months January 2022 to March 2023.
23. In terms of the conversion, CR said that all residential portions of the rental unit are being removed, except the bathroom will remain in place. He said the kitchen and bedroom closets have already been removed. CR said the unit is not habitable as residential premises because there is no kitchen. He said he does not know how long it would take to put a kitchen in, or the cost. He said that he has not made any inquiries about this. He said he did not anticipate the LTB proceeding to be delayed this long.

24. CR said that when the N13 was given they were still waiting for roof repairs, and after that, they did not finish the unit to permit the Tenant to move back in because they would then have to demolish those installations to convert the unit. He said this would not make practical sense.

25. On redirect, CR was referred to an email from EP to PS, dated August 11, 2022 (DOC-996487, p. 38). PS objected to this document being relied on because it is communication between the legal representatives about potential resolution. EP noted the email is not marked "without prejudice" and is only being referred to because EP references a forthcoming N13 notice in the email, which predates the August 22, 2022 email from the Tenant to CR noted above. The purpose is to demonstrate that the N13 was not given in retaliation to the Tenant's August 22, 2022 email. I accepted the email for this limited purpose. In the email, EP wrote: "In the meantime my client has now decided to convert the space to commercial use and in that regard I will be preparing an N13".

26. On redirect, a copy of the building permit itself (as opposed to only the approved drawings) were entered as evidence.

27. PS was permitted to cross-examine CR about the permit. On cross-examination on this document, PS asked why the permit indicates that occupancy is not approved under the permit. CR said that when a tenant opens a business at the location, they are responsible for obtaining a change of use permit, which is when occupancy for commercial use is finally permitted.

Tenant's Evidence (L2 Application)

28. The Tenant referred to a series of photos that he took when he entered the rental unit on February 2023 (DOC-996487, pp. 50-67). He said that at the time, the unit needed only a kitchen (i.e. cupboards, counters, appliances), and some minor repairs, and he could have moved back in. He said that the unit appeared habitable apart from the missing kitchen. He said that he did not notice anything structurally changed.

Law & Analysis – L2 Application

29. PS submitted that the N13 contains inadequate particulars because it lacks specifics about how the work to convert the unit will be carried out.

30. In *Ball v. Metro Capital Property,* [2002] OJ No 5931 ('*Metro Capital*'), the Divisional Court considered adequacy of particulars in notices of termination of tenancy. At issue in *Metro Capital* was an N5 notice of termination, which can be given under section 64 of the Act. Though it was a different type of notice, some of the same principles apply to N13 notices given under section 50.

31. In considering the adequacy of particulars, it is important to consider the context of the notice. A notice must contain adequate particulars so that a tenant is in a position to know the case to be met, and to decide whether to dispute allegations in the notice. In *Metro Capital,* the Court also refers to a tenant considering whether to stop the relevant conduct to void the notice: *Metro Capital, supra,* para 10. This latter observation is not relevant to an N13 notice, because N13 notices are not voidable, nor do they relate to tenant conduct.

32. Referring to N5 notices, the Court wrote that "[p]articulars should include dates and times of the alleged offensive conduct together with a detailed description of the alleged conduct engaged in by the tenant": *Metro Capital, supra,* para 12.

33. The context of an N13 is different. It is a no-fault notice of termination, and so there are no "allegations" *per se,* and no offensive conduct. A tenant is not required to respond, for example, to an allegation that they engaged in some specific conduct at a specific time on a specific date. In the context of an N13 notice, the tenant does not need to defend their own conduct.

34. An N13 notice does still need to contain adequate particulars so that the Tenant can decide whether or not to challenge it, and to know the cause that has to be met. In the case of a conversion to a non-residential use, the Tenant needs to know what the non-residential use will be, and what, if anything, has to be done to the unit to be able to implement that use.

35. In this case, the N13 notice clearly states that the non-residential use will be commercial, and it says that the residential portions of the rental unit, including the kitchen, bathroom, and bedrooms will be removed and converted to a space for commercial occupancy. I find these particulars to be adequate for the Tenant to be able to decide whether to challenge the N13 and to be able to understand the case to me met. The issues on an application based on an N13 notice, as outlined below, are whether the appropriate compensation was given, whether the Landlord has obtained all necessary permits or other authority (or taken all reasonable steps to do so), and whether the Landlords' genuine intent is to convert the unit as stated in the N13. The N13 notice provides adequate information for the Tenant to consider these issues, decide whether to challenge the notice, and know the case to be met.

36. The application is based on an N13 notice of termination, given under clause 50(1)(b) of the Act. That provision 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,
>
> (b) convert it to use for a purpose other than residential premises;

37. Under subsections 52(2), the Landlords were required to compensate the Tenant in an amount equal to one month's rent because the Tenant received the N13 notice for conversion of the rental unit to a non-residential use, and the residential complex contains fewer than five residential units. Under section 55.1 of the Act, this was required to be paid by the termination date in the notice. PS acknowledged that the required compensation was paid as required.

38. Section 73 of the Act states:

> **Demolition, conversion, repairs**

> **73** (1) The Board shall not make an order terminating a tenancy and evicting the tenant in an application under section 69 based on a notice of termination under section 50 unless it is satisfied that,
>
> (a) the landlord intends in good faith to carry out the activity on which the notice of termination was based; and
>
> (b) the landlord has,
>
> (i) obtained all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, or
>
> (ii) has taken all reasonable steps to obtain all necessary permits or other authority that may be required to carry out the activity on which the notice of termination was based, if it is not possible to obtain the permits or other authority until the rental unit is vacant. 2006, c. 17, s. 73.
>
> **Determination of good faith**
>
> (2) In determining the good faith of the landlord in an application described in subsection (1), the Board may consider any evidence the Board considers relevant that relates to the landlord's previous use of notices of termination under section 48, 49 or 50 in respect of the same or a different rental unit. 2020, c. 16, Sched. 4, s. 13.

39. Based on all of the evidence before me, I am satisfied that the Landlords in good faith intend to convert the rental unit to a non-residential use. I found CR to be a credible witness. His evidence was clear and consistent. The Landlords have taken the time and incurred the expense of obtaining a building permit and having formal plans drafted and approved for the conversion. I accept CR's evidence that it has been the Landlords' ultimate plan to convert the rental unit since they found that the property's zoning would permit it several years ago. For these reasons, I find that it is the Landlords' genuine intention to convert the rental unit to a non-residential use. That a previous N13 to make the rental unit into a two-bedroom unit was given to the Tenant in 2017 does not change this. CR said this was prior to the current zoning being in place.
40. I also find that the Landlords have obtained the necessary building permit and have the proper zoning in place to implement the conversion. No other permit or authority is needed, except for the change of use permit, which cannot be obtained until a commercial occupant applies for one. One cannot be obtained in advance without knowing the specific commercial use.
41. The Landlords require the rental unit to be vacated because the Landlords in good faith intend to convert it to a non-residential use.

Relief from Eviction

42. PS submitted that the Landlord's application must be dismissed under clauses 83(3)(a) and (c). Under clause 83(3)(a), PS submitted that the Landlords are in serious breach of

their responsibilities under the Act or a material covenant of the tenancy agreement. The factual basis for this argument overlaps with the Tenant application, considered below, and so is considered together with that application.

43. Under clause 83(3)(c), PS submitted that the N13 notice and L2 application amount to a reprisal, because the N13 was served three days after the Tenant sought an update from CR, and about 7 weeks after the Tenant's application was filed. The Tenant attempted to secure or enforce his rights, and in PS' submission, this was the reason that the N13 notice was given.

44. Clause 83(3)(c) of the Act is only engaged where ***the*** reason for the application being brought is that the Tenant attempted to secure or enforce his legal rights. A provision with the same wording was included in the *Tenant Protection Act, 1997,* SO 1997, c.24, ss. 84(2)(c) ['*TPA*'], which the RTA replaced. Prior to the *TPA,* the *Landlord and Tenant* included a provision that was similar, but not the same. While the Act and TPA wording require the LTB to refuse to grant an eviction application where ***the*** reason for the application being brought is that the Tenant attempted to secure or enforce legal rights, the *Landlord and Tenant Act* required such refusal where such retaliation was ***a*** reason for a landlord bringing an application: *MacNeil v. 976445 Ontario Ltd.,* [2005] OJ 6362 (Ont. Div Ct.), para 26 ('*McNeil*').

45. For clause 83(3)(c) to be engaged, I must be satisfied that retaliation is the Landlords' sole or primary purpose for seeking termination of the tenancy: *MacNeil, supra,* para 26.

46. Based on the evidence before me, I find that the sole or primary purpose of this application is that the Landlords wish to convert the rental unit to a non-residential use. It may be that the Tenant attempting to secure or enforce his rights was a reason that the application was brought – had the Tenant not attempted to secure his right to seek to preserve his tenancy and reoccupy the unit, the Landlord's application may not have been necessary – but I do not find that the Landlord's application was a reprisal as contemplated by clause 83(3)(c) of the Act.

T2/T6 Application

Agreed Facts

47. The parties agreed to the following facts:

    a. On December 31, 2021 there was a fire in the residential complex which forced the Tenant to move out of the rental unit, and

    b. The Tenant paid rent for the months of January 2022 to April 2022 after he vacated, but these payments were returned by the Landlord.

Evidence of the Tenant (T2/T6 Application):

48. The Tenant said he lived in the rental unit from February 2011 to December 31, 2021. On December 31, 2021 he moved out of the unit because there was a fire that rendered the unit uninhabitable.

49. The Tenant referred to a text message chain between himself and CR between January 1, 2022 and March 31, 2022 (DOC-1004068, pp 3-38). These messages reveal that CR initially indicated to the Tenant that everything would need to be emptied out of the rental unit "for a few days" to facilitate the restoration work. Then on January 5, 2022, the Tenant texted CR saying that "… there is water leaking buckets through the front of the unit" and that one of the workers told the Tenant to move his property "… because of leaks in other areas upstairs as well". The Landlord responded, saying he was made aware of the issue, and "[t]here are large hols in the roof …".

50. ON January 25, 2023, the Tenant texted CR to advise him that the rental unit had been cleared out. CR responded, saying that they should be able to begin work on the unit "asap". On January 31, 2022, the Tenant texted CR to ask for an update on the restoration work, but there was no response from CR. The Tenant texted CR again on February 22, 2022 to ask if CR was available for a discussion and CR responded several hours later to say he was available. The Tenant did not remember for certain if there was a phone call that day, but thinks there was. He said he does not clearly remember the conversation, but there was no update about the restoration of the rental unit.

51. On March 9, 2022, the Tenant texted CR to ask if he had spoken to "Scott" and if there are any updates. CR replied, writing that he saw "Scott" that day, and "Scott" would be emailing "… an update to everyone". "Scott" was the restoration manager on site. The Tenant said he does not remember receiving an email from Scott, but he did say he attended the rental unit a number of times and spoke to Scott. He said Scott would not provide exact timelines, and would just advise that they were working on it, waiting on permits, waiting for engineers, etc.

52. Next on March 30, 2022, the Tenant texted CR asking for contact information for the Landlords' insurer, which CR provided. On March 31, 2022 CR asked the Tenant by text message for contact information. In response the Tenant asked CR for an update, and CR said that they were waiting for a permit for the roof. CR also wrote "[i]t's looking like it's going to be a much longer process than originally anticipated. Delays at every turn so far". CR also wrote that "[t]hey won't start any repair until the roof is complete as they do not want to have any of the work potentially damaged by leakage from the roof".

53. At this time, CR said he could not give the Tenant a timeline, but that Scott had suggested that it may be June or July before the work is complete, and that this may be "best case" as the scale of the work has grown significantly. The Tenant said he was aware of that after being in contact with Scott and the Tenant's insurance adjuster.

54. PS sought to enter an email from EP to the Tenant on April 11, 2022 (DOC-996487, pp 21-22). EP objected to this email being entered as evidence, as it is an email marked "without prejudice" and included a settlement offer. PS submitted that the probative value of the email outweighs any prejudicial effect. I did not allow the email into evidence. The email is marked without prejudice and includes settlement discussions, and this must be respected. If without prejudice emails are accepted as evidence, it may dissuade parties from engaging in settlement discussions or making resolution offers for fear that communications intended to be made without prejudice would, effectively, be with prejudice.

55. The Tenant entered as evidence a series of photographs of the rental unit that he took on February 7, 2022 when he attended the unit (DOC-996487, pp 44-48). These photos

reveal substantial portions of the drywall, ceiling, and insulation removed. The Tenant said that work was being done in the unit at the time, and said there appear to have been some repairs completed (as opposed to only removal of damaged building materials). He said this is contrary to the Landlord's text message in March saying they would not start repairs until the roof was finished. I note that in some photos thew area looks clean, bit drywall is still missing and it is not clear from the photos that any repair work had commenced.

56. The Tenant then referred to his August 23, 2022 email to CR, and CR's August 30, 2022 response (DOC-996487, p 32). The Tenant said that from the text messages outlined above at the end of March 2022 until August 30, 2022, he had not received any updates or communication from the Landlords. Notably, in CR's August 31, 2022 email, he says that the Tenant's representative had been updated, and the Tenant should get updates from him. The Tenant said he received no updates except an email from EP and an email from Scott in July 2022 that did not contain any update.

57. The Tenant then referred to a series of photographs he took of the rental unit when he attended it on February 20, 2023 (a little more than one year after the previous series of photographs was taken). These photos reveal that repairs appear to be substantially complete, except that all of the kitchen cabinets, counters, and appliances are missing from the kitchen area. What appear to be pipes for the kitchen sink are protruding from the floor. The Tenant said the stove and other kitchen outlets remained in place, and the unit was mostly the same as it was before, but for some minor changes and the missing kitchen elements.

58. The Tenant noted that the tenant in the upper unit also had to vacate because of the fire, and he believes that tenant was able to move back into the unit around April 2023. This seems to align with CR's evidence that he received compensation for lost rent up to March 2023.

59. The Tenant said that the whole experience since the fire has been a "nightmare" and that he just wants to move back in. He said he believes the N13 notice is just a way to get him out of the unit. He thinks the Landlord's strategy is like a "renoviction" – that he is being forced out because his rent is not high enough. He moved into the rental unit in 2011 and noted that the tenant of the upper unit who moved in around 2017 was allowed to return.

60. The Tenant said that he was rendered "homeless" and he had no access to his belongings for a time. He said that he has had difficulty from a mental health perspective dealing with the uncertainty and having to scramble for living accommodation. He has had sleepless nights, and this has affected all aspects of his life.

61. On cross-examination, the Tenant acknowledged that at the time of the fire, the main floor of the building contained two commercial units and one residential unit (the rental unit). The Tenant also acknowledged that after receiving the August 30, 2022 email from CR, he would expect future updates through his legal representative.

62. On cross-examination, EP took the Tenant through a communications log that was created by CR. The Tenant reiterated that there was no communication from the Landlord between March 31, 2022 and August 30, 2022. He said he got no updates from the insurance adjuster either, and although he had some communication with Scott, Scott would tell him to talk to CR about timelines.

63. The Tenant acknowledged that from the time of the fire up to the hearing date (August 24, 2023), we have been experiencing the COVID-19 pandemic, which has impacted construction timelines and supply chains.
64. The Tenant noted this is the second N13 he has received from the Landlords, but apart from these notices, there have been no other notices of termination or applications to end his tenancy since it began.
65. In respect of his evidence about mental health struggles, the Tenant said that he has spoken with others about this, including doctors, but does not have any medical report or documentation in evidence.

Landlord Evidence – CR (T2/T6 Application)

66. CR said the cause of the fire on December 31, 2021 is not known, but it appeared to be electrical. The fire was not in the rental unit, but the Tenant had to vacate because of smoke damage.
67. He said that initially after the fire, through communication with his insurer, be believed the repairs to the rental unit would be fairly simple. After the work removing damaged material began it was discovered that there was more damage than originally thought, and the whole unit would have to be taken to the studs and built back up.
68. CR said that he did have a verbal conversation with the Tenant on February 22, 2022 at which point he told the Tenant that he did not have a good idea of the timeline for repair, because there was more damage than initially thought. He said that the application for a permit to repair the roof was made in mid to late February 2022.
69. CR said that by mid-May 2022 all of the work in the units was done in terms of removing damaged materials. He said he was told by his insurance adjuster that no further work could be done until the roof was repaired, but they were still waiting for the permit.
70. CR said that he was regularly following up with his insurance adjuster and the City regarding the status of the permit. He said he was becoming frustrated, and finally learned of the issue causing the delay late in the Summer of 2022. There was a heritage issue causing delay. The residential complex is made up of two buildings that are attached. The older building has a heritage designation. It was the newer building that needed the repairs, and CR said after a conversation with the heritage committee, the issue was able to be waived, and the roof permit was finally issued near the end of August 2022.
71. In terms of communications, CR said that he was very responsive to and communicative with the Tenant from January 1, 2022 to March 31, 2022, always replying to the Tenant within 24 hours, and often instantly. He said that after March 2022, the Tenant retained a legal representative because he was not happy to have been paying rent, and the Landlords then retained EP. CR said he believed communication should be through the parties' legal representatives after this point. He also said that if there were updates to provide after March 31, 2022 then they would have been provided. He said there was not much to updated between April and August 2022 because they were waiting for the roof permit.
72. CR said the tenant of the upper unit was able to move back in on May 1, 2023.

73. CR said that over the relevant period, he gave the Tenant all of the information he had. He tried to get the work done as quickly as possible. He said that the initial intent was to repair the unit for the Tenant to re-occupy, but when the extent of necessary repairs became apparent, the Landlords decided to consider conversion, and ultimately this is why the N13 notice was given when it was, in August 2022. CR said there are no plans to restore the unit to a residential unit so the Tenant can move back in because they plan to use the unit for commercial purposes.
74. CR also said his bottle shop business in the building just re-opened after being closed for about 20 months.
75. On cross-examination, CR denied that restoration work had commenced in February 2022, and said this was only emergency services work to remove damaged materials. He said the framing visible in the Tenant's photos from that time was not new framing. In terms of the layout, CR agreed that nothing has changed since the fire, and said the actual conversion work has not started yet. He said that it is being left in this layout and the commercial tenant would decide on the layout they want.
76. CR said the unit has not been returned to a residential unit because that would be a waste of time, money, and resources given the Landlords' intention to convert it to a commercial use..

Law & Analysis – T2 Application

77. In the T2 application, the Tenant alleges that the Landlords substantially interfered with his reasonable enjoyment of the rental unit or residential complex. It is important to recognize that the word "substantial" is used to qualify the interference covered. This means that mere annoyances or trivial incidents are not normally covered. The word "reasonable" is used to describe the enjoyment covered. This means that the standard to be applied is not that of the particular tenant before the LTB, but of the reasonable tenant in similar circumstances: *TST-55210-14,* 2014 CanLII 58631, para 32.
78. The T2 application also alleges that the Landlords have harassed the Tenant. The term harassment is not defined in the Act, but has been interpreted to mean conduct toward another that one knows or ought to know is unwelcome, and that is pursued for no legitimate, lawful purpose: *Grimard v. Knight,* 2006 ORHTD No. 62, para 4.
79. The allegations in the application are that the Landlords substantially interfered with the Tenant's reasonable enjoyment and harassed him by collecting rent from him for the months of January to April 2022, resulting in the Landlords being "unjustly enriched". While I would agree that a 100% rent abatement would be an appropriate remedy for this period, the Landlord has already returned these rent payments. CR said he was following his insurer's advice in collecting the rent, and when he learned he should not have done so, the money was returned at the Tenant's request.
80. The T2 application also alleges that the Landlords substantially interfered with the Tenant's reasonable enjoyment and harassed him because they failed to communicate with the Tenant a timeline for the repairs, are not communicating with the Tenant for the purpose of frustrating him and making him seek other accommodation, and are purposefully not making repairs in a timely manner.

81. To prove a fact on a balance of probabilities, there must always be sufficient clear, convincing, and cogent evidence of the fact: *FH v. McDougall,* 2008 SCC 53 (CanLII), para 46.

82. These allegations have not been proven. There was not clear, convincing, and cogent evidence to satisfy me on a balance of probabilities that the Landlords purposefully did not make timely repairs or failed/refused to communicate with the Tenant in order to frustrate him. The application was filed in July 2022, and I note that the upper tenant did not move back in until May 2023. CR provided reasonable explanation as to how and why the work was delayed. I also do not accept that the Landlord failed to reasonably communicate with the Tenant. There was regular communication from the time of the fire to March 31, 2022 when the parties both retained legal representation. I also accept CR's evidence that there was not much to communicate in terms of timelines from March 31, 2022 to August 30, 2022, because the Landlords were waiting for the roof permit.

83. In terms of communication, I find that the reasonable tenant in similar circumstances would find the communication up to March 31, 2022 to be satisfactory, and that it would be reasonable to thereafter seek updates through his legal representative. This does not amount to harassment or a substantial interference with reasonable enjoyment.

84. In terms of not making repairs in a timely manner, I accept that the Landlords could have completed repairs to the rental unit so the Tenant could have moved back in by about May 2023. This is based both on the fact that this is when the upper tenant moved back in, and based on the February 2023 photos taken by the Tenant. After this point, the Landlords have admittedly not completed the restoration to a residential premises because they intend to convert the unit, and this would not be practical.

85. I agree with the Landlord's position. While not completing the restoration may be conduct that the Landlords knew or ought to have known would be unwelcome, it was pursued for a lawful, legitimate purpose: converting the rental unit to a non-residential use pursuant to clause 50(1)(b) of the Act after giving the Tenant the N13 notice in August 2022. This would amount to an interference that is certainly more than a mere annoyance or trivial incident, but the reasonable tenant in similar circumstances would understand this practicality.

86. The Tenant's T2 application is therefore dismissed.

Law & Analysis – T6 Application

87. In the T6 application, the Tenant alleges that has not repaired or maintained the rental unit or residential complex in a good state of repair or fit for habitation, or has not complied with health, safety, housing, or maintenance standards. The Tenant alleges that the rental unit was not repaired in a timely manner after the December 31, 2021 fire.

88. In *Onyskiw v. CJM Property Management,* 2016 ONCA 477, the Court of Appeal determined that a contextual approach is required when considering a landlord's potential breach of maintenance obligations, and that a breach will not be found where a landlord's response to a maintenance issue was reasonable in the circumstances: see paras 13-25; 51-60.

89. I find that the Landlords acted reasonably after the fire took place. There were delays in getting the restoration and repair work completed, but I find that the Landlord acted in a prudent manner and took reasonable steps to try to have the work completed as soon as possible. I also find that it was reasonable, once the Landlords decided on their intention to convert the rental unit to a non-commercial use and gave the Tenant the N13 notice, to not restore the rental unit to a residential use temporarily only to then demolish aspects of it to convert it shortly after. This would not make any practical sense.
90. The tenancy was not terminated in a manner permitted by the Act at the relevant time, and the Landlords were responsible to maintain the rental unit in a good state of repair and fit for habitation. They did not do this when they failed to make the unit habitable by installing the kitchen and permitting the Tenant to move back in in or after May 2023. But in the context of this case, given the extant N13 notice and pending application to the LTB, and the fact that the Tenant did not pay rent for the relevant period, I find that no remedy is appropriate.
91. The T6 application is therefore dismissed.

Clause 83(3)(a)

92. PS submitted that the Landlord's application must be dismissed because they are in serious breach of their obligations under section 20 of the Act. I disagree.
93. In *Puterbough v. Canada (Public Works and Government Services),* [2007] OJ No. 748 (Div. Ct.), the Court considered this provision's equivalent from the *TPA* in the context of a situation where the tenants took the position that the application – for demolition in that case – had to be dismissed because the units in question were in extensive disrepair. The Court observed that a contextual approach ought to be taken in consideration of whether a breach is "serious": see para 39.
94. While the tenancy was not terminated in a manner permitted by the Act and so the Landlords were in breach of their maintenance obligations under the Act beginning around May 2023 when the unit could have been restored and reoccupied, in the circumstances of this case, I do not find that the breach is "serious". Clause 83(3)(a) is not intended to require some significant work to be done only for that work to be undone months later.
95. All rent during the course of the tenancy was paid, and there is no last month's rent deposit.
96. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant is not in the rental unit presently, and there is no reason to extend an eviction date..

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant has already vacated the rental unit.
2. The Tenant's applications are dismissed.

January 8, 2024
Date Issued

Mark Melchers
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.