



Order under Section 69
Residential Tenancies Act, 2006

File Number: SWL-51040-21

In the matter of: 51953 TALBOT LINE
AYLMER ON N5H2R1

Between: Paul Vis
Vis Family Farms Inc.

Landlords

and

Christopher Couture
Samantha Fournier

Tenants

Paul Vis ('PV') and Vis Family Farms Inc. (the 'Landlords') applied for an order to terminate the tenancy and evict Samantha Fournier ('SF') and Christopher Couture (the 'Tenants') because they intend to demolish the rental unit. The Landlords also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by video conference on August 30, 2021.

The Landlords and the Tenants attended the hearing. The Landlords were represented by Susana Pereira.

PV and SF provided evidence.

Determinations:

1. The rental unit is a single-family home in a rural location. It is surrounded by farmland. The Landlords purchased the rental unit on or about November 20, 2020 as part of the larger purchase of land that, according to PV, they intend to integrate into their existing farming operations.
2. Five months after they bought the rental unit, on April 19, 2021, the Landlords served a N13 notice with a termination date of August 31, 2021. This application was filed on April 28, 2021.
3. The relevant sections of the *Residential Tenancies Act, 2006* (the 'Act') provide, in part:

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;

...

(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

52 (2) A landlord shall compensate a tenant in an amount equal to one month's rent or offer the tenant another rental unit acceptable to the tenant if,

(a) the tenant receives notice of termination of the tenancy for the purposes of demolition or conversion to non-residential use;

(b) the notice of termination is given on or after the day the Protecting Tenants and Strengthening Community Housing Act, 2020 receives Royal Assent;

(c) the residential complex in which the rental unit is located contains fewer than five residential units; and

(d) in the case of a demolition, it was not ordered to be carried out under the authority of any other Act.

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50. 2

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.

Compensation

4. The Landlords gave the Tenants a cheque dated July 29, 2021 for an amount equal to one month's rent plus interest on the Tenants' last month deposit. It appears, however, that the Tenants may not have cashed that cheque.

5. Subsection 55.1 of the Act requires that a landlord compensate a tenant no later than the termination date set out in the applicable N13. A tenant cannot, however, frustrate the ability of a landlord to provide compensation by refusing to accept compensation offered by a landlord by, for example, not cashing a cheque provided by the landlord.
6. Subsection 190(2) of the Act provides the Board with the jurisdiction to extend time requirements except for those identified in section 56 of the Regulations to the Act. Section 55.1 is not identified in section 56. I am, to the extent necessary, exercising my discretion under subsection 190(2) of the Act to extend the time for the Landlords to compensate the Tenants.
7. To the extent that the Tenants have not cashed and are now unable to cash the Landlords' cheque, the Landlords will be required to provide the Tenants with compensation by no later than November 30, 2021.

Permits

8. I am satisfied that the Landlords have obtained the permits required to demolish the rental unit.

Good Faith

9. The Tenants argued that the Landlords were not acting in good faith in seeking to evict them so that the rental unit could be demolished.
10. As noted above, PV testified that the Landlords wants to demolish the rental unit and return the property to farmland so that they can integrated it into their farm operations. He testified that that this was the initial intent in acquiring the rental unit.
11. According to PV, aside from not having its own well, the rental property does not have a septic field and the property on which the rental property is situated cannot be integrated into the Landlords farm operations unless the rental unit is demolished as a result of a resulting environmental issue.
12. SF argued that the Landlords: (a) allowed the Tenants believe that they could remain in possession of the rental unit; (b) are evicting them because they don't want to drill a well for the rental unit; and (c) would not work with them to permit them to remain in the rental unit. She also challenged PV's evidence with respect to the septic system.
13. SF also asserted that, at one point, that PV specifically told the Tenants that they could remain in possession of the rental unit. When I made inquiries with respect to that assertion, SF first indicated that it related to: (a) the tenant acknowledgment the Tenants signed in connection with the Landlords' purchase of the rental unit; and (b) the Landlords delayed in delivering the N13 notice. She later asserted that PV made verbal representations to this effect, but could not identify any specifics with respect to when those assertions were made.

14. In response to SF's assertions, PV testified that the delay between acquiring the rental unit and notifying the Tenants of the Landlords' intention to demolish the unit was motivated by not wanting to evict the Tenants in the winter and during COVID. He denied ever telling the Tenants that they could remain as tenants and denied requesting that the previous owner deliver a tenant acknowledgment. PV's evidence was that the previous owner delivered the tenant acknowledgments without being required to do so.
15. At the end of the hearing, there was a dispute between PV and SF with respect to other rental units that the Landlords purchased. The Landlords have not served N13 notices on the tenants of these units, but PV asserted that the tenants are migrant workers who will be leaving voluntarily. SF asserted that the tenants of these units are not migrant workers and will be returning in the spring of 2022. At some point during this exchange, I muted SF because of her conduct in interrupting PV while he was trying to give evidence and making accusations that he was being dishonest. I unmuted her once PV had provided his evidence.
16. What I must determine on this application is whether the Landlords have a genuine intent to reclaim possession of the rental unit and in good faith intend to demolish it. The reasons why they might have determined to demolish the unit and whether they are acting reasonably in doing so are not relevant to determining whether their intention is genuine. **[See *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC)]** The motives and conduct of the Landlords may, however, be relevant to my determination as to whether the Landlords have a good faith intention of demolishing the rental unit. **[See *Fava v. Harrison*, 2014 ONSC 3352 (CanLII)]**
17. After considering the evidence of PV and SF, I am satisfied on the balance of probabilities that: (a) the Landlords genuinely require possession of the rental unit; and (b) the Landlords intend in good faith to demolish the rental unit. The Tenants have not established any relevant motives or conduct on the part of the Landlords that would lead me to question the Landlords' bone fides in terms of their intention to demolish the rental unit. While I certainly sympathize with the Tenants, I am satisfied that the Landlords are acting in good faith.

Postponement of Eviction

18. The Tenant requested that I either: (a) postpone the eviction for an additional year; or (b) order that the Landlords pay them additional compensation equal to one year's rent.
19. I have no jurisdiction to award the Tenant's additional compensation and delaying eviction for one year from the date of this order is not, in my view, fair in all of the circumstances. I have, however, considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to postpone the eviction until April 30, 2022 pursuant to subsection 83(1)(b) of the Act.
20. The Tenants have four children ranging in age from 6 to 20 and have lived in the rental unit for almost 8 years. SF has not been working, but started working again in September of 2021. The Tenants have been looking for suitable alternative living

accommodations, but are having difficulty given the cost of similar rental units. They are now looking to purchase a home and require time to do so.

21. The Landlords, for their part, did not establish any urgency to evicting the Tenants and indicated that they would not object to an extended termination. PV indicated that the Landlords' did not wish to spend any more money on the rental unit. I considered that when making my determination, but I also considered that the Landlords purchased the rental unit knowing it was occupied by long-term tenants and have a statutory obligation to maintain the unit. **[See Act, s. 20(1)]**


Rent Deposit

22. The Landlords hold a rent deposit of \$800.00 from the Tenants. Interest on that rent deposit may be owing to the Tenants for the period from February 1, 2014 to April 30, 2022. The cheque that the Landlords provided to the Tenants as compensation appears to have included some interest and the amount owing depends on whether the Tenants have or are now able to cash the cheque provided by the Landlords.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before April 30, 2022.
2. If the Tenants have not cashed the cheque provided to them by the Landlords as compensation, the Landlords shall compensate the Tenants by paying them an amount equal to one month's rent on or before November 30, 2021, failing which this order shall be void and of no further force or effect. The Landlords will have complied with this paragraph by providing the Tenants with a cheque equal to one month's rent on or before November 30, 2021.
3. The Tenants shall pay the Landlord \$26.30 per day for compensation for the use of the unit from April 30, 2022 to the date they move out of the unit.
4. The Landlords shall apply the Tenants' last month rent deposit against rent for April of 2022 and any interest owing against any per diem amount owing by the Tenants.
5. If the unit is not vacated on or before April 30, 2022, then starting May 1, 2022, the Landlords 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 Landlords on or after May 1, 2022.

November 10, 2021
Date Issued



E. Patrick Shea
Member, Landlord and Tenant Board

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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 October 30, 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.