



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

Citation: Boissonneault v Lee, 2024 ONLTB 22279

Date: 2024-04-15

File Number: LTB-L-022182-23

In the matter of: 18771 COUNTY ROAD 2
CORNWALL ON K6H5R5

Between: Brent Boissonneault Landlord

And

Marcus Lee Tenants
Michelle Lacasse

Brent Boissonneault (the 'Landlord') applied for an order to terminate the tenancy and evict Marcus Lee and Michelle Lacasse (the 'Tenants') because:

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

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on January 30, 2024.

The Landlord, the Landlord's legal representative, Jordan Nieuwhof, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy and the claim for compensation in the application. Therefore, the tenancy is terminated as of May 15, 2024.

2. On March 13, 2023, the Landlord gave the Tenants an N13 notice of termination with the termination date of August 31, 2023. The Landlord claims vacant possession of the rental unit is required for demolition.
3. 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. The Landlord submitted plans for a redevelopment of the property which includes demolishing the four existing structures and building between nine and twelve new units. This redevelopment has been planned for approximately three years. The demolition of this particular building has been expedited by its condition. The Landlord has obtained a permit from the township permitting them to demolish the rental unit.
4. The Landlord paid the Tenants the required compensation by cheque delivered on August 23, 2023 and e-transfer sent on August 24, 2023. The Tenant has not cashed the cheque or accepted the e-transfer.
5. If the Tenant did not cash the cheque before it stale dated on February 23, 2024, they shall return it to the Landlord and the Landlord shall issue replacement compensation by April 7, 2024.

Maintenance Issues Raised

6. The Tenants submit that the Landlord is in serious breach of their maintenance obligations and that the notice was served in retaliation for the Tenants contacting the township about their maintenance concerns, and therefore the Board cannot order an eviction under sections 83(3) of the *Residential Tenancies Act, 2006* (the 'Act').
7. I accept the Landlord's submission that redevelopment plans have been in progress for approximately three years. Therefore, the primary reason for the demolition predates the maintenance complaint to the township.
8. The Tenants describe a series of maintenance concerns and relied on a Notice of Violation issued by the township on November 24, 2022. This notice lists repairs to be made, failing which the township will have the authority to issue an order to comply. The repairs include:
 - a) Peeling paint on exterior of building – renew paint
 - b) Exterior walls deteriorating and not weather tight – replace siding and other materials to be weather tight
 - c) Windows allowing entrance of wind, snow, rain and allowing heat loss – repair window frames and properly seal
 - d) Roof is not watertight – repair section of roof
 - e) Entrance window screen missing – replace
 - f) Front door and sliding door allow wind/rain/heat loss – repair door frame including weather stripping

- g) Kitchen ceiling and wall and living room ceiling have holes/cracks/loose plaster – repair holes/cracks/loose plaster
 - h) South side wall covered in plywood – replace with appropriate finish to match other finishes
 - i) Floor not level at crawlspace hatch – add flooring to make level
 - j) Vermin – ensure steps to maintain free from mice
9. The Tenants confirmed that items d (roof), e (entrance window), and h (plywood on wall) have been resolved. The Tenants submit that the repairs in the notice are minor and can be completed by the Landlord. With respect to the exterior walls and siding, the Tenants submit that they are only asking for the exterior siding or coating to be replaced and are not asking for structural repairs.
10. The Landlord agrees that the exterior paint is peeling and the sliding door is not weather tight, but submits that these do not constitute a serious breach and the exterior paint is a cosmetic issue rather than a maintenance issue.
11. The Landlord states that the notice of violation had been withdrawn, and the township would not have issued the demolition permit if they were expecting the repairs to be completed. I accept the logical conclusion that the township would not have issued a demolition permit if they were pursuing a repair order on the property, however this is not determinative of a Landlord's obligations under the Act.
12. The issue of whether the required maintenance is major or minor arises in two contexts. The Landlord's reason for wanting to demolish the building now, rather than when the redevelopment construction is estimated to begin in spring of 2025 is that it has very significant structural issues which are cost prohibitive to repair; they describe the cottage as 'falling down' and fear that it will collapse soon if not demolished. The Tenants dispute this assertion and maintain that they can continue to live in the cottage with only minor repairs, that is without addressing the structural issues, and that demolition is unnecessary. They testified that the repairs the Landlord state need to be done are exaggerated and were not ordered by the township; that the township ordered only minor repairs. On the other hand, the Tenants are alleging that for the purpose of section 83, the Landlords are in serious breach of their maintenance obligations. It is difficult to reconcile these two positions – if the maintenance concerns are minor, then they would not normally prevent the Board from ordering an eviction. Rather than dismiss the maintenance concerns on the basis of the Tenants' characterization of them as 'minor', I will consider the issues in the full context of the situation.
13. In *Onyskiw v. CJM Property Management Ltd.*, 2016 ONCA 477, the Court of Appeal held that the LTB should take a contextual approach and consider the entirety of the factual situation in determining whether there was a breach of the landlord's maintenance obligations, including whether the landlord responded to the maintenance issue reasonably in the circumstances. The court rejected the submission that a landlord is automatically in breach of its maintenance obligation as soon as an interruption in service occurs.

14. The Landlord relies on the report of professional engineer, Luc Marion, dated August 4, 2023 which recommends that:

‘this building should be demolished because its foundation and its Beam/Floor assembly are beyond repair; it is an unsafe situation. As well, there is absolutely no way to make this building vermin proof.’
15. The report describes the ‘unorthodox’ way the foundation was built and notes that small buildings such as this were commonly constructed without permits in the 1950s. Attached photos demonstrate uneven settling of the foundation, joists and beams rotten to the point that they can be penetrated by a finger, crumbling foundation, and resulting gaps in the structure which would allow vermin to enter.
16. The Landlord also submitted evidence about the need to replace the septic system. A report from One Call Plumbing and Gasfitting dated September 13, 2023 reports that in response to a clogged drain on August 4, 2023, they identified that the septic tank is full to the top with liquid. Invoices confirm that the tank was emptied on August 9th and 15th, with notes that there was surface discharge.
17. The Landlord states that a septic system contractor advised that the rapid filling of the tank is caused by the leach field being saturated and needing to be replaced. Besides the cost of such a repair, the Landlord does not believe that the township would approve a replacement because of the proximity to a waterway.
18. The Tenants deny that the septic system needs replacement.
19. The Landlord has retained pest control professionals at various times and has attempted various methods, including spray foam and steel wool, to seal as many holes in the foundation as possible. They submit that with the condition of the foundation, holes will continue to develop. They also note that a possible solution of poison in the crawlspace under the house was refused by the Tenants because they have dogs.
20. The issues with the exterior walls, the window frames, cracks and holes in the plaster, and the unlevel floor are all caused and exacerbated by a shifting foundation. This is a natural occurrence to a certain degree in all buildings, but it is extreme in this situation. The Landlord explained that the current state of the foundation means that any repairs that are made now will quickly be redundant because additional settling will cause the issues to reoccur. Nonetheless, they have made efforts to provide temporary fixes where possible such as plastic and netting over holes.
21. An argument could be made that it would be unfair to allow a Landlord to circumvent their maintenance obligations by allowing the rental unit to fall into disrepair until it needed to be demolished. However, that is not the situation in this case. I find that the Landlord has responded reasonably to these issues and repaired as much as is possible in the circumstances. As a result, I do not find that the maintenance issues raised by the Tenants constitute a serious breach of the Landlord’s maintenance obligations.

Relief from Eviction

22. The Tenants request a delay of eviction until construction on the redevelopment begins. I accept the Landlord's suggestion that if the eviction is not delayed by an extended period of time, the most likely outcome is the building collapsing on itself. The septic system will continue to require substantial costs to maintain, which would be prejudicial to the Landlord. As a result, it would be unfair and unsafe to allow a prolonged eviction date.
23. I have 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, 2024 pursuant to subsection 83(1)(b) of the Act. This will give the Tenants some additional time to make arrangements.
24. Based on the Monthly rent, the daily compensation is \$19.17. This amount is calculated as follows: $\$582.96 \times 12$, divided by 365 days.
25. There is no last month's rent deposit.

It is ordered that:

1. If the Tenants did not cash the compensation cheque before it stale dated, they shall return it to the Landlord and the Landlord shall issue replacement compensation by April 15, 2024.
2. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before May 15, 2024.
3. If the unit is not vacated on or before May 15, 2024, then starting May 16, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 May 16, 2024.
5. The Tenants shall pay the Landlord compensation of \$19.17 per day for the use of the unit starting January 31, 2024 until the date the Tenants moves out of the unit.

April 15, 2024

Date Issued

Dawn Carr

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 Tenants expires on November 16, 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.