



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

Citation: 1093886 Ontario Incorporated v Taylor, 2024 ONLTB 16112

Date: 2024-03-14

File Number: LTB-L-022067-23

In the matter of: 301, 4933 SECOND AVE
NIAGARA FALLS ON L2E4J2

Between: 1093886 Ontario Incorporated Landlord

And

Rona Taylor Tenants
Richard Brooks

1093886 Ontario Incorporated (the 'Landlord') applied for an order to terminate the tenancy and evict Rona Taylor and Richard Brooks (the 'Tenants') because the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to the unit.

This application was heard by videoconference on February 13, 2024.

The Landlord's Legal Representative, Brianna Brady, the Landlord and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities that he in good faith requires possession of the rental unit in order to do repairs to it that are so extensive that they require a building permit and vacant possession of the rental unit. Therefore, the tenancy between the Landlord and the Tenants is terminated and the Tenant must vacate on or before May 31, 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.
3. On March 1, 2023, the Landlord gave the Tenants an N13 notice of termination by courier, with the termination date of June 30, 2023, seeking vacant possession of the rental unit for the purpose of major repairs required to the rental unit, and requiring a building permit.
4. The Landlord paid the Tenants compensation equal to three months' rent on May 9, 2023, after the Tenants declined to accept the Landlord's offer of an alternate unit.
5. The Landlord collected a rent deposit of \$850.00 from the Tenants and this deposit is still being held by the Landlord.
6. Interest on the rent deposit is owing to the Tenant for the period from July 2, 2019 to April 30, 2024.
7. The N13 describes the work to be performed as follows:

Remove and replace the existing, outdated electrical wiring to comply with current building code standards/requirements in the living room, dining room, kitchen, washroom, hallways and two bedrooms including all light fixture boxes, light switches and outlet boxes. The bedroom and washroom ceilings and the upper part of the walls throughout the unit have cracks where the plaster has separated. These sections of the walls are to be removed, replaced and repainted during the electrical wiring updates.

8. The N12 notice was served under section 50(1)(c) of the *Residential Tenancies Act, 2006* ("Act") which states:

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

(c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

Electrical System Update

9. The Landlord described the residential complex as a seven-unit building that was built in 1938. He introduced numerous photos taken by an electrician from Natural Electric to show the exposed wiring and ungrounded electrical system in the Tenants unit and the same issues in other units of the building. The Tenant alleged that some of the photos were not photos of her unit. I accept the testimony of the Landlord as it is clear that the photos of the Tenants unit, that were not in dispute illustrate the deteriorating condition of the electrical system.
10. The Landlord also submitted a letter dated December 28, 2022 from Natural Electric regarding the rental unit and another unit in the building. The letter states the wiring is old and has greatly deteriorated and that all of the wiring in the rental unit must be replaced due to safety concerns; and that the unit is unsafe and hazardous and must be fixed as soon as possible. The letter also states that the unit must be cleared of belongings due to the amount of work required.
11. The Landlord's witness, Alessandro DiLeo (AD) is a Master Electrician and owner/operator of DiLeo Electric since 2005, who was contracted by the Landlord to complete the repairs/renovations. AD testified that he completed an inspection of the rental unit on April 14, 2023 and found the electrical wiring was an old ungrounded system that was deteriorating and the insulation on the wiring was also crumbling leaving wires exposed. He also stated that the electrical system did not comply with building codes and is a fire hazard.
12. AD also testified that the work involved was very extensive and would require cutting and removing the existing plaster on the walls and ceilings at many different locations in order to pull the new wiring through, as well as the hydro will need to be disconnected for approximately 10-15 days or longer depending on how quickly the work can be completed and inspected.

13. AD also testified that the electrical issues were present in all of the other units in the residential complex and that five of the six other units have been completed and were vacant when the work was done; and that the rental unit was the last unit to be updated.
14. AD testified to the electrical permit #18223952 issued by the Electrical Safety Authority (ESA) for the work to be completed in the rental unit.
15. The Tenant noted that on the ESA permit invoice, the Risk classification indicated "LOW". AD testified that the rating is regarding the frequency of inspections necessary.
16. Based on the photos and permit submitted, as well as the testimony of AD and the Landlord, I am satisfied that the Landlord has proven on a balance of probabilities that the rental unit requires necessary upgrades to the electrical system and requires a permit for the work to be completed. I also find that it is necessary for the rental unit to be vacant in order to complete the work to the electrical system, specifically considering that the hydro will be need to be disconnected for approximately 10-15 days.

Drywall Repairs

17. The Landlord is a Construction Engineer Technician and has been in the construction industry since 1972, and is also the owner and President of Roma Construction. He testified that repairs to the plaster walls and ceilings in the rental unit are extensive and require replacement as they were original from 1938.
18. The Landlord testified to several photographs he took of the rental unit which illustrate the condition of the plaster walls and ceilings throughout the unit that appear to be cracking, peeling and structurally concerning.
19. The Landlord also testified vacant possession of the rental unit would be required due to the extent of the repairs and that they would be completed during the electrical upgrades that required vacant possession of the rental unit.
20. The Landlord further testified that he would not know if a permit was required to repair the walls and ceilings until they were torn down. However, he would obtain any additional permits required once the assessment was completed.
21. The Tenant testified that the ceilings have been in the same state since 2014.
22. Based on the photos submitted and testimony of the Landlord, I am satisfied that the Landlord has proven on a balance of probabilities that the repairs to the plaster walls and ceilings are extensive and a necessary repair that will require vacant possession of the rental unit, as the rental unit contains a significant amount of the Tenants belongings that could potentially be damaged from the walls and ceilings being torn down.
23. I also accept the Landlords testimony as an experienced Construction Engineer Technician that the walls and ceilings need to be removed, before determining whether or not a permit is required for the renovations to the walls and ceilings in the rental unit.

24. The Landlord collected a rent deposit of \$850.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$67.85 is owing to the Tenants for the period from July 2, 2019.
25. In accordance with subsection 106(10) of the *Residential Tenancies Act, 2006*, (the 'Act') the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

26. 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 May 31, 2024 pursuant to subsection 83(1)(b) of the Act.
27. The Tenants have been aware of the ongoing electrical upgrades to the residential complex and their rental unit is the last unit to be updated.
28. The electrical updates are necessary as they are a fire hazard and pose a safety concern.
29. The Tenant, Rona Taylor (RT) stated that her husband and Tenant, Richard Brooks (RB) is non-verbal and non-mobile as he is confined to a wheelchair, as a result of a stroke he had. She requested 3-4 months to vacate the rental unit in order to provide additional time to pack their belongings as it would be difficult with her husbands' condition and the amount of personal belongings in the rental unit.
30. RT also stated that they have two cats in the rental unit.
31. I find it reasonable to provide the Tenants with additional time to vacate the rental unit due to the circumstances surrounding RB's medical condition and the number of belongings in the rental unit. However, as the current electrical system is considered a fire hazard that does not meet building codes and is a safety concern, I find that a 3-4 month extension is not reasonable.
32. In addition, under section 53 of the Act, the Tenants have a right to move back into the rental unit when the repairs are done and continue paying the same rent as they do currently. If the Tenants intend to exercise this right of first refusal they must notify the Landlord in writing before they vacate and provide the Landlord with any updates to their address.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated as of May 31, 2024. The Tenants must move out of the rental unit on or before May 31, 2024.
2. The Tenants shall pay to the Landlord \$10,718.40, which represents compensation for the use of the rental unit from July 1, 2023 to May 31, 2024. **Any rent payments that came due during this period that the Tenants have made shall be offset against the stated amount to be paid to the Landlord.**
3. The Tenants shall also pay to the Landlord \$31.90 per day for compensation for the use of the unit from June 1, 2024 to the date the Tenant move out of the unit.
4. The Landlord owes \$917.85 which is the amount of the rent deposit and interest on the rent deposit, and this is deducted from the amount owing by the Tenants.

5. If the Tenants does not pay the Landlord the full amount owing on or before May 31, 2024, the Tenants will start to owe interest. This will be simple interest calculated from May 1, 2024 at 7.00% annually on the balance outstanding.
6. If the unit is not vacated on or before May 31, 2024, then starting June 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 June 1, 2024.

April 11, 2024
Date Issued

Christina Philp
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 December 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.