



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

Citation: Jonuzaj et al v Powell et al, 2023 ONLTB 77588

Date: 2023-12-05

File Number: LTB-L-016553-23

In the matter of: 3, 602 Winona Drive Toronto
ON M6C3V4

Between: Eva Jonuzaj
Steven Giordano
Landlords

And

Christine Powell Tenants Armando Caetano

Eva Jonuzaj and Steven Giordano (the 'Landlords') applied for an order to terminate the tenancy and evict Christine Powell and Armando Caetano (the 'Tenants') because:

- the Landlords require possession of the rental unit in order to demolish the unit.

This application was heard by videoconference on November 16, 2023. The Landlords, The Tenant's legal representative Sarah McGrory, and the Tenants attended the hearing.

Determinations:

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy shall be terminated on March 31, 2024.
2. The Tenants were in possession of the rental unit on the date the application was filed.

3. The Landlords served both a N13 Notice of Termination (N13 notice) as well as a N12 Notice of Termination (N12 notice) on the Tenants. I canvassed the Landlords on whether they intended to proceed on both notices. The Landlords were content to proceed with just the N13 notice and withdraw their N12.

N13 Notice of Termination

4. On February 15, 2023, the Landlords gave the Tenants an N13 notice of termination with the termination date of June 30, 2023 deemed served February 15, 2023. The Landlords claim vacant possession of the rental unit is required for demolition.
5. The parties do not agree on what day the rent was due each month. This matters for this application because it may effect the validity of the N13 notice, as the termination date on that notice must be the last day of a rental period in accordance with section 50(2) of the *Residential Tenancies Act, 2006* ("Act").
6. The Tenant referred to text messages where the parties were communicating about the rent being due on the 15th of every month.
7. It is clear that prior to January 2023 the Landlords believed the rent was due on the 15th of every month, as expressed in the text message dated January 24, 2023. Despite this message exchange, the Tenants took the position that rent was (and continued to be) on the first of every month. This is evidenced by her own messages. Subsequent to this message exchange, the Tenants began to pay their monthly rent on or near the first of every month from February 1, 2023 through to November 1, 2023. This is a drastic alteration from 2022 where the Tenants constantly made payments around the 20th of every month.
8. The N12 notice and N13 notice were both dated February 15, 2023, after this text message exchange. Both notices are based on the rent being due on the first of the month, as they provide for a termination date that is the last day of a month.
9. It is my finding that the parties had a meeting of the minds after the text message exchange that the rent is due on the first of every month. The N13 notice is therefore valid.

Demolition

10. As explained bellow, I am satisfied that the Landlords require the rental unit to be vacated because the Landlords in good faith intends to demolish it.
11. The Landlords testified that the rental complex consists of three units. Currently, the Landlords reside in Unit 2 and a different, unrelated tenant lives in Unit 1. The subject of this application is Unit 3.
12. The Landlords intend to demolish Unit 2 and Unit 3, changing the footprint of the rental complex. Changes to the footprint of Unit 3 will include: remove side staircases, removing the main entrance, building a new ensuite bathroom and removing the kitchen. Changes to

the footprint of Unit 2 will include: relocating the dining room while reconfiguring the unit and living space. The result will be that Unit 2 and Unit 3 will be combined to form one unit moving forward.

13. The Landlords submitted evidence to support their plan to demolish Unit 3. This included the issued building permit and engineer drawings. In addition to the permit, the Landlords submitted a feasibility study which weighed various options for the Landlords to achieve their result of combining units. The study concluded that merging Unit 2 and Unit 3 was the most feasible remedy.
14. The Landlords testified that the purpose of undertaking this demolition was two-fold. First, they intend to start a family and require more living space. Second, both Landlords work from home and their employers require more privacy in the work setting.
15. I am satisfied that the Landlord has obtained the necessary permits for this work. Specifically, the Landlords obtained a building permit from the City of Toronto dated February 26, 2023. In addition, they provided evidence by way of email dated January 20, 2023 from the City of Toronto indicating that a demolition permit is not required for this particular type of work.
16. In submissions the Tenants' representative conceded that she believes that the Landlords will conduct the demolition as suggested. Based on all the evidence before me I find that the Landlords, in good faith, have demonstrated they will demolish the rental unit.

Compensation and Rent Deposit

17. The residential complex contains fewer than five residential units and the demolition was not ordered to be carried out under the authority of any other Act. Therefore, the Landlords are required to compensate the Tenants in an amount equal to one month's rent by the termination date or offer the Tenants another rental unit acceptable to the Tenants.
18. The Landlords paid the Tenants the required compensation twice on June 18, 2023, one for the N13 Notice and the other for the N12 Notice. At the hearing, the Landlords waived any request for return of the N12 Notice compensation paid despite not proceeding with that portion of their application.
19. The Landlord collected a rent deposit of \$1,060.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$262.37 is owing to the Tenants for the period from July 1, 2009 to November 16, 2023.
20. 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

21. The Tenant testified they have cultural ties to their community. Additionally, although they have the ability to move now, the Tenants stated they would likely not be able to maintain the monthly rent of a new rental unit.
22. In response, the Landlords indicated that their building permits are renewable and they would like to begin work within the next four months.
23. 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 April 30, 2024 pursuant to subsection 83(1)(b) of the Act. This delay is being granted to afford the Tenants more time to find a suitable future accommodation in their preferred geographical living area.

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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, 2024.
2. If the unit is not vacated on or before April 30, 2024, then starting May 1, 2024, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 1, 2024.

December 5, 2023

Date Issued

Brett Lockwood

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 Tenant expires on November 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.