



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

**Citation:** 1083 Main Street Inc. v Hearn, 2023 ONLTB 75156

**Date:** 2023-11-23

**File Number:** LTB-L-035637-22

**In the matter of:** 5, 1083 1/2 MAIN ST E  
HAMILTON ON L8M1N5

**Between:** 1083 Main Street Inc. Landlord

**And**

Richard Hearn Tenant

1083 Main Street Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Richard Hearn (the 'Tenant') because the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to the unit.

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

This application was heard by videoconference on November 7, 2023. The Landlord's Legal Representative, G. Gosling, the Tenant's Legal Representative R. Henriquez, and the Tenant attended the hearing. The Tenant's spouse, T. Caputo (TC), also attended the hearing.

**Preliminary Issues:**

The Landlord served several Tenants in the residential complex with a Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use (N13). At the hearing of LTB-L-035645-22 on March 8, 2023, the Landlord's Agent, D. Ward, gave evidence about the reasons for the service of the notice. The parties accepted D. Ward's evidence as applicable in this case.

The Tenant sought a dismissal of the Landlord's application because the Landlord failed to comply with the provisions of section 71 (3) of the Residential Tenancies Act, 2006 ('the Act'), and argued that pursuant to section 71 (4) of the Act, the Board should not have accepted the application for

filing. The Landlord opposed the Tenant's request, stating that the Tenant was aware of the other applications and suffered no prejudice.

Section 71 (3) and (4) of the Act provides:

**Previous use of notices under s. 48, 49 or 50**

(3) A landlord who, on or after the day subsection 11 (2) of Schedule 4 to the *Protecting Tenants and Strengthening Community Housing Act, 2020* comes into force, files an application under section 69 based on a notice of termination given under section 48, 49 or 50 shall, in the application,

(a) indicate whether or not the landlord has, within two years prior to filing the application, given any other notice under section 48, 49 or 50 in respect of the same or a different rental unit; and ...

**Non-compliance with subs. (3)**

(4) The Board shall refuse to accept the application for filing if the landlord has not complied with subsection (3)

A review of the application shows that the Landlord named only one unit an N13 notice was served for instead of five. Although the Act states that the Board must not accept the application for filing if the Landlord did not comply with section 71 (3) of the Act, the Board did accept the application because the Landlord completed that section of the application albeit, incompletely. There is no dispute that the Tenant and the Tenant's Legal Representative, who represented other Tenants who received similar N13 notices, were fully aware of those notices. I am therefore, satisfied that the Landlord did not set out to mislead or withhold information from the Tenant.

Given the Tenant's knowledge of the other applications, I initially asked the Landlord to amend the application, and serve the Tenant with an amended copy. However, as the hearing continued after my ruling and based on the Tenant's evidence, no prejudice was demonstrated from the Landlord's omission, I accepted the Landlord's application as validly filed and orally amended.

**Determinations:**

1. On March 29, 2022, the Landlord gave the Tenant a Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use (N13) with a termination date of July 31, 2022. The Landlord claims vacant possession of the rental unit is required for extensive repairs and renovations that require a building permit.
2. The N13 notice indicates that services will be shut off to the building, and the repairs include upgrades to electrical, heating, and cooling systems, and possible removal of walls, replacement of floors, and plumbing.
3. The Landlord's Project Lead, DW, testified on March 8, 2023, that the building permit was acquired on December 23, 2022 and if vacant possession is not obtained in line with the work required in the permit, the building would continue to deteriorate.
4. The building permit, presented as evidence, shows the description of work as "*Renovation of existing multi-unit residential apartment building and the creation of 9 new residential units by dividing two existing residential units and converting 7 commercial units into residential*

*units. Exterior envelope to be maintained, no new square footage is being added. No modifications to building height or floor space index.”* The permit goes on to state “*No occupancy permitted.*”

5. The Landlord is required to compensate the Tenant an amount equal to three months rent and this payment was made to the Tenant.
6. The Tenant’s spouse, TC, testified that they have resided in the unit since 2010 with their two adult sons, one of whom has a brain injury which makes him unable to live independently.
7. TC stated that at some undisclosed time in the past, they were temporarily the superintendents for the building, and she became familiar with painting, installing flooring and replacing drywall, light fixture, bathtub etc.
8. With regards to the work the Landlord has indicated they intend to carry out in the unit, TC stated that:
  - a. the plumbing for the unit was done in March or April 2023, and is no longer required although there is just one outstanding plumbing work which would only take a few hours as told to her by the Landlord’s renovation crew.
  - b. the heating was upgraded in November 2022.
  - c. new breaker boxes were installed six years ago and rewired last month.
  - d. the windows do not require repairs; and
  - e. the removal of walls could be done with the Tenant present in the unit.
9. CT further stated that repairs continue throughout the residential complex and they give entry to the unit when requested. The front door of the unit is sometimes blocked by a fence and there is no emergency exit, the fire alarms do not work and just the week prior to the hearing, the fire department gave the Landlord a series of orders over fire safety.
10. The Tenant has sought alternative accommodation but while the rent for their two-bedroom unit with a mud room is about \$900.00, smaller units currently go for approximately \$2,800.00. The family’s sole income is \$2,700.00 from the Ontario Disability Support Program.

### Analysis

11. Section 83 (2) (3) (a) of the Act provides:

**Mandatory review**

(2) If a hearing is held, the Board shall not grant the application unless it has reviewed the circumstances and considered whether or not it should exercise its powers under subsection (1).

**Circumstances where refusal required**

(3) Without restricting the generality of subsection (1), the Board shall refuse to grant the application where satisfied that,

(a) the landlord is in serious breach of the landlord's responsibilities under this Act or of any material covenant in the tenancy agreement;

12. Section 50 (1) of the Act provides that a landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to demolish it; convert it to use for a purpose other than residential premises; or do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.
13. A review of 'Schedule A' of the notice of termination shows the level of work the Landlord intends to carry out in the rental unit and for which they obtained a building permit. The Tenant's testimony about some of the work that has been carried out is not sufficiently detailed for me to find that vacant possession is no longer necessary and it is based on the Tenant's opinion and they are not professionals.
14. Regarding the issues raised on maintenance of the residential complex, the evidence demonstrates that the residential complex is not in the best state and hence requires extensive repairs. The reason for this application is to address the Landlord's maintenance obligations so that the rental unit is suitable for the Tenant.
15. Based on the foregoing, I find that the Landlord is not in serious breach of their responsibilities under the Act. The Landlord intends to carry out extensive repairs and has paid to the Tenant compensation as mandated by the Act. The Landlord's request for vacant possession of the rental unit is reasonable in the circumstance.
16. In accordance with section 53 of the Act, the Tenant has a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed, at a rent that is no more than what the Landlord could have lawfully charged if there had been no interruption in the tenancy. The Tenant shall give the Landlord notice in writing before vacating the rental unit if the Tenant wishes to exercise that right and must inform the Landlord of any change in address.
17. The Landlord incurred costs of \$186.00 for filing the application. As the application was filed before the date of termination in the notice, the Landlord is not entitled to reimbursement of those costs.
18. There is no last month's rent deposit.
19. I have considered all 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 January 15, 2024 pursuant to subsection 83(1)(b) of the Act. Additional time is given to the Tenant to secure alternative accommodation.

**It is ordered that:**

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 15, 2024.
2. If the unit is not vacated on or before January 15, 2024, then starting January 16, 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 January 16, 2024

**November 23, 2023**

**Date Issued**

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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 July 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.