



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

Citation: PE Construction Inc. v Howlett, 2023 ONLTB 68417

Date: 2023-11-16

File Number: LTB-L-007247-23

In the matter of: 1119 JOSEPHINE AVE
WINDSOR ON N9B2L6

Between: PE Construction Inc. Landlord

And

Tyler Howlett Tenant

PE Construction Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Tyler Howlett (the 'Tenant') 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 May 30, 2023.

The Landlord Daniel Grenier, the Tenant's Legal Representative T. Jenkins and the Tenant attended the hearing.

Determinations:

Was disclosure made as per Board rules?

1. The Tenant's Legal Representative did not disclose the evidence to the Landlord. She only uploaded it to the portal and believed that the disclosure was through TOP. She did not give any reason why she did not send a copy to the Landlord besides that. I find that disclosure was not made in accordance with Board Rules which state that disclosure can only be made to another party through the portal if the person or party receiving it has consented in writing to accept service through the portal. There was no consent given by the Landlord.
2. The Tenant's Legal Representative submitted that the Landlord had not sent his evidence as per the rules. The Landlord stated that he only received the work permit the week before the hearing, he uploaded a copy on the portal on May 23, 2023, and sent the Tenant a copy on May 29, 2023.
3. I find that the Landlord's evidence is necessary for me to make a determination of whether the N13 was served in good faith. The Landlord also served the Tenant with a copy by email shortly after he received it, whereas the Tenant's Legal Representative did not serve the Landlord at all.

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4. The evidence the Tenant wanted to submit is intended to establish the past events from before the current Landlord took over. I find that oral testimony from the Tenant will suffice on this issue. Therefore, I accepted the Landlord's evidence and not the Tenant's.
5. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated as of December 15, 2023 with the Tenant having the first right of refusal once the unit is renovated.
6. The Tenant was in possession of the rental unit on the date the application was filed.
7. On January 20, 2023, the Landlord gave the Tenant an N13 notice of termination with the termination date of May 31, 2023 deemed served on the same day. The Landlord claims vacant possession of the rental unit is required for extensive renovations.

Background facts

8. The Tenant moved into the rental unit on May 18, 2018 along with his son and a friend Ryan O'Brien. The lease agreement is in the friend's name. Subsequently Ryan O'Brien vacated the unit. The Tenant, his son and another friend continued to stay in the rental unit. This other friend also vacated the unit when the N13 was served.
9. The Tenant and the previous Landlord had an agreement in December 2022 to reduce the rent to \$1,000.00 from \$1,300.00 until the renovations were going on in the house. The rent will revert back to \$1,300.00 once the renovations are completed. The renovations have never been completed.
10. The issue brought before me related to non-payment of rent is not relevant to the application before me therefore, are not being addressed here.

N13 notice for extensive renovations

11. The Landlord testified that the rental unit is a ranch style raised bungalow with two-bedrooms on the main floor with a living and a kitchen. The basement also has one or two bedrooms. He had obtained permits to convert it to a two-unit residential complex with two-bedrooms on each floor.
12. The work entails some demolition, they will create a common foyer space which will lead to the two units. There will also be extensive electrical and plumbing work. Since the foyer is a common area, it will be an on-going construction area till the renovations are completed.
13. He estimated that he would begin as soon as three weeks after the Tenant vacates and the entire project should be completed in four to five months based on previous experience of similar projects he has undertaken in the past. The Landlord also testified that he has considered having a separate entrance to the basement unit from the rear of the property instead of the common foyer. However, due to the existing utility room which would need accessed by both units as well, he has no other option but to use the foyer as a common entrance.
14. The Tenant testified that he and the Landlord have an uncomfortable relationship and he feels threatened by the Landlord. The Landlord first visited the rental unit around December 22, 2022 under the garb of an inspection, all the Landlord did was threaten the

Tenant that he would evict him and did not go past the kitchen to do an inspection. The Landlord testified that the Tenant asked him to leave therefore the inspection was not completed.

15. The Tenant testified that the house was in state of disrepair and most of the basement was left as is in the middle of renovations with unfinished drywall, exposed vents, a leaking backdoor etc. He also testified that there was a City order to comply issued on March 18, 2023 but the Landlord has not done anything.
16. The Landlord testified that he spoke with the city, and they agreed to give him an extension since the order will be complied with if the work is done as per the permit he has applied for. The permit that was tendered was for 'alterations to construct additional dwelling unit in lower level of existing single-family dwelling as per approved plans'. The description of proposed work states what the Landlord testified to – common foyer, work in utilities room and construction in the basement unit to add a kitchen.
17. The Tenant testified that he has lived through renovations when the previous Landlord started them and believes that he can live around the renovations. The Landlord testified that the renovations are extensive and there may be periods when the electrical and the plumbing needs to be done and there may be disruptions in those services. Also, all construction has to be done through the foyer of the house.

Analysis

18. The N13 was served pursuant to section 50(1)(c) of the *Residential Tenancies Act, 2006* (the 'Act') with 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,

- (a) demolish it;
- (b) convert it to use for a purpose other than residential premises; or
- (c) do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.

19. Section 73 of the Act states:

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.”

20. Based on the evidence before me, I find that the Landlord in good faith intends to do repairs or renovations that are so extensive that they require a building permit and vacant possession of the rental unit.
21. The Landlord’s evidence establishes that extensive work will be done to the rental unit especially related to plumbing and electrical and there may be service disruptions, the anticipated timeline of the work is five months. The Landlord is also willing to continue with the tenancy once the proposed work is complete. The Tenant’s request to continue living at the rental unit during the renovations is not possible due to the scale and impact of the work, including disruptions in services during the renovations.
22. I am satisfied that the Landlord has obtained the necessary permits for this work. The permit entails work to be done to the foyer as a common area, alteration to existing basement unit to remove a bedroom and add a kitchen, utility room to be finished as a common area with laundry room, and interconnected smoke alarms to be installed.
23. I accept the Landlord’s explanation as to why he has not yet taken any action to comply with City’s order. I find it reasonable for the Landlord has not done the ordered work yet since he will be finishing the basement as part of the proposed work in the permit.
24. While there seems to be an underlying acrimonious relationship between the parties, I do not find that this is sufficient to find that Landlord does not intend to do the work as outlined in the notice. The acrimonious relationship seems to stem from the Tenant not paying rent and the Landlord trying to assert his rights forcefully.

Compensation and last month's rent deposit

25. Pursuant to section 52 of the Act, the Landlord is required to compensate the Tenant in an amount equal to the rent for one month or offer the Tenant another rental unit acceptable to the Tenant, because:
 - the residential complex contains less than five residential units, and;
 - the repair or renovation was not ordered to be carried out under the authority of this or any other Act.
26. The Landlord paid the Tenant the required compensation on May 30, 2023 via e-transfer in the amount of \$1,300.00.

Last month's rent deposit

27. There is no last month's rent deposit.

Section 83 considerations

28. 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 December 15, 2023 pursuant to subsection 83(1)(b) of the Act.
29. The Tenant testified that he has received ODSP since 2009 and is the sole caretaker of his son. Due to limited resources, he is unable to find another rental unit even on a temporary basis. The rental unit is on the same street as his son's school, and he has lot of friends in the area. They have also built a community with the neighbours.
30. I do empathize with the Tenant and his circumstances, but they won't change in the foreseeable future. The delay in issuing the order has given the Tenant some extra time and relief. A further delay may be prejudicial to the Landlord as well since the Tenant is not paying rent.

Tenant's right to move back once the repairs are done

31. The Tenant has the right to move back into the rental unit 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.
32. The Tenant must give the Landlord notice in writing of the Tenant's intent to move back into the unit before vacating the rental unit. The Tenant must inform the Landlord in writing of any change in address.

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 December 15, 2023.
2. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, 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 December 16, 2023.

November 16, 2023
Date Issued

 Sheena Brar
 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 April 30, 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.