



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

Citation: Cedar Springs RV Park Inc. v Morrison, 2023 ONLTB 68416

Date: 2023-11-09

File Number: LTB-L-002461-23

In the matter of: 3, 634041 HWY 10
MONO ON L9W5P4

Between: Cedar Springs RV Park Inc. Landlord

And

Sharon Morrison Tenant

Cedar Springs RV Park Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Sharon Morrison (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to convert the unit to a non-residential use.

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 May 30, 2023.

The Landlord's Agent Akbar Ali, Landlord's witness Shawn Oldford and the Landlord's Legal Representative V. Smith attended the hearing.

As of 10:12 a.m. the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

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 November 30, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On December 29, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of May 31, 2023 deemed served the same day. The Landlord claims vacant possession of the rental unit is required for converting it back to non-residential use.
4. The N13 was served pursuant to section 50(1)(b) of the *Residential Tenancies Act, 2006* (the 'Act') with states:

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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.

5. In addition, section 52 of the Act currently requires the Landlord to pay the Tenant compensation equal to one- or three-month's rent depending on the number of residential units in the residential complex, or to offer the tenant another rental unit acceptable to the tenant if the Landlord serves and N13 notice for conversion for non-residential use.
6. 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."

Landlord's uncontested testimony

7. The Landlord requires the rental unit to be vacated because the Landlord in good faith intends to convert it back to a restaurant. I am satisfied that the Landlord does not need to obtain the necessary permits for this work.
8. The Landlord's Agent testified that the residential complex currently contains a fully functional restaurant. This rental unit used to form a part of the restaurant but was converted to a residential unit before the Tenant moved in. Due to growing demand for the restaurant, they have decided to use the rental unit to add additional seating to the restaurant.
9. The unit was part of the restaurant before, so permits are not required although some electrical work needs to be done to bring the unit up to code. The ESA (Electrical Safety Authority) grants the certificate once the work is completed. (A letter from the electrician was tendered)
10. The Landlord's Agent also testified that they have already begun work at the site and are waiting for the Tenant to vacate to complete the work. He also testified that this was the only unit being converted back since it shares a wall with the existing restaurant.

11. The Landlord tendered into evidence pictures of work already being done at the unit and a quote from a company on the expenses to convert the rental unit back into the restaurant.
12. Based on the Landlord's uncontested evidence, I find on a balance of probabilities that the Landlord in good faith intends to convert the rental unit to non-residential use, namely a restaurant. I have no reason to doubt about Landlord's intentions as the Landlord has already commenced the necessary work.

Compensation

13. The Landlord's Agent testified that the residential complex contained a total of 4 residential units.
14. As the residential complex contains fewer than five residential units, in accordance with section 52(2) of the Act, the Landlord is required to compensate the Tenant in an amount equal to one month rent by the termination date or offer the Tenant another rental unit acceptable to the Tenant.
15. The Landlord's Legal Representative Landlords' Legal Representative stated that she had sent the Tenant a formal letter dated May 10, 2023 to offer the Tenant two month's rent \$1,800.00 as compensation along with \$1,000.00 as moving costs. The Landlord also offered another unit to the Tenant. As of the hearing date the Tenant had not accepted the offer.
16. There was also a verbal conversation where the Tenant refused to accept the compensations offered.
17. She added that the Landlord is aware that it needs to pay the Tenant before the termination date of May 31, 2023 and the Landlord is going to send the Tenant a cheque in the amount of \$1,800.00 before end of day May 31, 2023 as required by the Act.
18. I am satisfied that the Landlord would have paid the Tenant compensation equal to one month's rent on or before the termination date of May 31, 2023.

Daily compensation and last month's rent deposit

19. Based on the Monthly rent, the daily compensation is \$29.59. This amount is calculated as follows: \$900.00 x 12, divided by 365 days.
20. There is no last month's rent deposit.
21. 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 November 30, 2023 pursuant to subsection 83(1)(b) of the Act.
22. Based on the uncontested evidence before me I am satisfied that the Landlord wants to convert the rental unit to non-residential use and has offered the Tenant another alternate unit. A further delay this is detrimental to the Landlord and there has been a delay already so the Tenant has had more than enough time to find a suitable unit.

It is ordered that:

1. If the Landlord has not already done so, the Landlord will pay the Tenant compensation of at least \$900.00 by November 25, 2023.
2. If the Landlord complies with paragraph 1 above, the tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before November 30, 2023.
3. If the unit is not vacated on or before November 30, 2023, then starting December 1, 2023, 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 December 1, 2023.
5. The Tenant shall also pay the Landlord compensation of \$29.59 per day for the use of the unit starting June 1, 2023 until the date the Tenant moves out of the unit. If the Tenant has made any payments those shall be deducted from the total amount due.
6. If the Tenant does not pay the Landlord the full amount owing on or before November 30, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 1, 2023 at 7.00% annually on the balance outstanding.

November 09, 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 May 4, 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.