



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

Citation: McEachran v Dolbear, 2023 ONLTB 71131

Date: 2023-11-02

File Number: LTB-L-018948-23

In the matter of: 305, 1064 BRENCHLEY ST SARNIA
ON N7S1R5

Between: Jon McEachran Landlord

And

Derek Dolbear Tenant

Jon McEachran (the 'Landlord') applied for an order to terminate the tenancy and evict Derek Dolbear (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 October 19, 2023.

Only the Landlord Jon McEachran and the Landlord's Legal Representative Kevin Kok attended the hearing.

As of 9:30 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. Since the Tenant did not attend and the Landlord was prepared to proceed, the matter proceeded by way of an uncontested hearing pursuant to section 7 of the *Statutory Powers Procedure Act*, R.S.O. 1990.

This file was heard with Board files LTB-L-018936-23 and LTB-L-019338-23.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy in the application. Therefore, the tenancy is terminated effective November 13, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On January 30, 2023, the Landlord served the Tenant an N13 notice of termination with the termination date of May 31, 2023. The Landlord claims vacant possession of the rental unit is required for repairs and renovations.
4. Section 50(1)(c) of the Residential Tenancies Act, 2006 (the Act) reads as follows:

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.
5. The Landlord is required to compensate the Tenants an amount equal to three months rent or offer the tenant another rental unit acceptable to the Tenants, because:
 - the Tenant has not given the Landlord a written notice that the Tenant intends to occupy the rental unit when the repairs or renovations are completed;
 - the residential complex contains at least five residential units, and;
 - the repair or renovation was not ordered to be carried out under the authority of this or any other Act.
6. The Landlord paid the Tenant the required compensation on January 30, 2023 by cheque. I am satisfied the Landlord paid the required compensation pursuant to section 54(1) of the Act.
7. The Landlord testified he purchased the residential complex in 2017. Issues with the plumbing in the building began to arise in 2019 and progressively became worse. The Landlord's evidence was the issues had become almost monthly requiring the attendance of plumber to the complex to perform various procedures to clear blocked piping.
8. The Landlord submitted several invoices from plumbers showing an ongoing plumbing problem exists at the residential complex. The dates of the invoices submitted range from August 2020 to November 2022.
9. The Landlord's evidence was each time a plumber attended the complex to resolve a sewer back up the water for the entire building had to be turned off. The Landlord testified he had originally hoped to manage the ongoing problems with the building's plumbing. On November 4, 2023, after plumbers had used a camera to examine the piping, the Landlord was advised the pipes were clogged to the point of needing replacement. At this time, the Landlord decided a permanent solution was required.
10. The Landlord explained that the plumbing in the building exists in the walls and the under the concrete main floor. There is no access to the piping.

11. The Landlord submitted a letter from Sarnia Plumbing and Mechanical Ltd. which advises him:

We have been doing Plumbing and Mechanical maintenance at this property for the last two years. We have been on site monthly to clear difficult clogs that have required the water being shut off to the entire building. After many hours of Investigating, including using a camera to map and explore the damage in the underground pipes, we have concluded the Sanitary lateral needs to be replaced. This is unfortunate because there is no access to the plumbing under the building. The building is approximately 60 years old and we have been hired to jack hammer out the entire building and replace the sanitary laterals.

It is estimated that this job will take 12 weeks or more to complete and there will be no access to water during that period. Furthermore the ministry of Labour forbids lay people access to construction sites.

12. The Landlord's evidence was the repairs will require the water to be shut off for the duration of the repairs and the entire main floor will be nonexistent. He stated the rental unit must be vacant in order to conduct and complete the work required.
13. The Landlord submitted a building permit issued by the Building Services Department in Wyoming, Ontario. It was issued on June 13, 2023 and authorizes the work required to undertake the project.
14. The Landlord testified he would prefer not to have to do the repairs as they will come at great financial cost to him for the contractors and loss of rental income during the process.
15. Based on the uncontested evidence of the Landlord, I am satisfied on a balance of probabilities, 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. It is clear to me the Tenant cannot reside in the unit while there is no running water in the rental unit and a main floor that is completely broken up and unable to be traversed. I am also satisfied that the Landlord has obtained the necessary permits for this work.
16. 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. 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.

Section 83 Considerations

17. The Landlord sought termination of the tenancy within 11 days of this order. They cited ongoing prejudice in lost rental revenue as well as prejudice to the other tenants that intend to move back into the rental unit once the project is completed.

18. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. I asked the Landlord if they were aware of any circumstances the Tenant may be experiencing that would make an eviction unfair and they were aware of none.

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 November 13, 2023.
2. If the unit is not vacated on or before November 13, 2023, then starting November 14, 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 November 14, 2023.

November 2, 2023
Date Issued

John Cashmore

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 14, 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.