



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

**Citation:** Leca Properties Holdings Corporation v Thomson, 2023 ONLTB 68434

**Date:** 2023-10-17

**File Number:** LTB-L-007713-23

**In the matter of:** 2, 42 EMERSON AVE  
TORONTO ON M6H3S8

**Between:** Leca Properties Holdings Corporation Landlord

**And**

Andy Thomson Tenant

Leca Properties Holdings Corporation (the 'Landlord') applied for an order to terminate the tenancy and evict Andy Thomson (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to demolish 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 May 29, 2023.

The Landlord's Legal Representative George Brown, the Landlord's Agent Abilio Leca, the Landlord's Agent Steven Leca (his son), and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing. Steven Leca testified on behalf of the Landlord.

**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 effective December 31, 2023.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N13 Notice of Termination - Demolition

3. On December 1, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of March 31, 2023. The Landlord claims vacant possession of the rental unit is required for demolition.
4. The rental unit is on the second floor of a house, which contained 4 rental units at the time that the Landlord purchased the property in 2021. Three of the rental units were vacated pursuant to N13 notices. Only the Tenant's rental unit on the second floor remains occupied.

2023 ONLTB 68434 (CanLII)

5. It is not the rental complex that is being demolished, but rather the rental unit.
6. The N13 notice states that the basement and first floor of the rental complex will be extensively renovated, and the second-floor units will be demolished. After the work is complete, the first and second floors will become a single-family home which will be occupied by family members of the Landlord. There will be two rental units in the basement.
7. The N13 notice lists work to be done, which includes gutting the building to the studs to reinsulate, underpinning the structure, reinforcing basement walls, bathroom renovations, and upgrading to electrical, heating, and plumbing systems.
8. The Landlord's Agent testified that the property was purchased in poor condition and that they had begun underpinning the basement to work on the walls, but due to conflict with the Tenant, the Landlord chose to stop work. He stated that there were currently no rentable units in the rental complex, as walls had been removed and work had begun.
9. The Tenant does not dispute the genuine intention of the Landlord to do the work as outlined. The Tenant testified that he had misunderstood the information provided by the Landlord and did not realize that the first and second floors were being combined into one unit. He had thought, rather, that the rental unit would remain and that the Landlord was seeking to do only extensive renovations which would permit him a right of first refusal.
10. I am satisfied on the evidence that the Landlord requires the rental unit to be vacated because the Landlord in good faith intends to demolish it. I am satisfied that the Landlord has obtained the necessary permits for this work. The Landlord submitted into evidence a City of Toronto Building permit dated August 18, 2022 and architect's drawings which show the intention to combine the first and second floor units into one area.
11. 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 Landlord is required to compensate the Tenant in an amount equal to one month's rent by the termination date or offer the Tenant another rental unit acceptable to the Tenant.
12. The Landlord submitted evidence of an e-transfer to the Tenant of the required compensation on June 30, 2022 (for a previous N13 notice for which the application was withdrawn) and on February 4, 2023. The Tenant did not accept the compensation. The Landlord continued to resend the compensation each time that the e-transfer expired. The Tenant testified that he did not accept the compensation as he thought it would mean that he needed to move out of the rental unit prior to a hearing before the Board.

### Analysis

13. The relevant sections of the Act are as follows:

**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.

(2) The date for termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.

(3) A notice under clause (1) (c) shall inform the tenant that if he or she wishes to exercise the right of first refusal under section 53 to occupy the premises after the repairs or renovations, he or she must give the landlord notice of that fact in accordance with subsection 53 (2) before vacating the rental unit.

**53** (1) A tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations may, in accordance with this section, have a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed.

(2) A tenant who wishes to have a right of first refusal shall give the landlord notice in writing before vacating the rental unit.

(3) A tenant who exercises a right of first refusal may reoccupy the rental unit at a rent that is no more than what the landlord could have lawfully charged if there had been no interruption in the tenant's tenancy.

(4) It is a condition of the tenant's right of first refusal that the tenant inform the landlord in writing of any change of address.

**202** (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

(a) may disregard the outward form of a transaction or the separate corporate existence of participants; and

(b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

14. In a situation where the rental unit continues to exist, even in an extremely altered form, it is possible for the tenant to exercise a right of first refusal, because the rental unit is still there: the tenant may move back and continue the tenancy. In a situation where the rental unit is gone, it is not possible for the tenant to exercise a right of first refusal: the rental unit is longer there and so the tenant cannot move back.
15. It is clear on these facts that turning the entire first and second floor of the home into a single-family residence is not an alteration (renovation) of the existing rental unit but is a demolition of the unit, in that the unit ceases to exist.
16. The Tenant did not accept the compensation owing under subsection 52(2) of the Act. This does not mean, however, that the Landlord failed in its obligation to provide the compensation, as the Landlord's Agent testified that the Landlord attempted to provide the

compensation each month. A finding to the contrary would allow a Tenant to perpetually frustrate the Landlord's attempts under s. 48 by continually refusing to accept payment.

#### Daily compensation

17. The Tenant was required to pay the Landlord \$2,065.81 in daily compensation for use and occupation of the rental unit for the period from April 1, 2023 to May 29, 2023. Monthly rent that was paid during this period will be deducted from this amount.
18. Based on the Monthly rent, the daily compensation is \$35.01. This amount is calculated as follows: \$1,065.00 x 12, divided by 365 days.
19. There is no last month's rent deposit.

#### Relief from eviction

20. The Tenant lives in the rental unit with his wife and 3-year-old daughter. He has resided in the unit for 15 years, loves the area, and the family has significant community ties. He testified that rental housing is expensive and difficult to find. At the time of the hearing, his daughter was preparing to begin school in the area in the fall.
21. The Tenant stated that he might require 6 months to find alternative housing but would leave sooner if he was able to do so. The Landlord was amenable to a 60-day extension to a standard order.
22. 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 31, 2023 pursuant to subsection 83(1)(b) of the Act.
23. Due to the date of this order, the Tenant has effectively had benefit of slightly over four months of delay from the date of the hearing.
24. I must have regard for the fact that while the Landlord has the right to proceed with the work as planned, the Tenant will require some time to secure alternate housing for his family. A transition to a new school, if required, can be more easily completed at the end of the calendar year. While I accept that the delay may be inconvenient to the Landlord, I am not convinced the inconvenience rises to the level of unfairness, particularly if the parties can come to an understanding so that work inside the rental complex can continue in the interim.

#### **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 31, 2023.
2. If the unit is not vacated on or before December 31, 2023, then starting January 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 January 1, 2024.

4. The Tenant shall pay to the Landlord \$2,065.81, which represents compensation for the use of the unit from April 1, 2023 to May 29, 2023. Monthly rent that was paid during this period will be deducted from this amount.
5. The Tenant shall also pay the Landlord compensation of \$35.01 per day for the use of the unit starting May 30, 2023 until the date the Tenant moves out of the unit.
6. The compensation that the Landlord is required to pay to the Tenant pursuant to subsection 52(2) shall be applied to the month of December 2023, the last month of the tenancy.
7. If the Tenant does not pay the Landlord the full amount owing on or before December 31, 2023, the Tenant will start to owe interest. This will be simple interest calculated from January 1, 2024 at 7.00% annually on the balance outstanding.

**October 17, 2023**

**Date Issued**

\_\_\_\_\_  
Margo den Haan

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 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.