



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

Citation: 1116796 Ontario Inc. v Lawrence, 2023 ONLTB 59141

Date: 2023-08-29

File Number: LTB-L-039264-22

In the matter of: 2779 Windhman Line
Norwich ON N0J1P0

Between: 1116796 Ontario Inc. Landlord

And

Joshua Lawrence Tenants
Athena Calvo

1116796 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Joshua Lawrence and Athena Calvo (the 'Tenants') because:

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

This application was heard by videoconference on May 16, 2023.

The Landlord's representative Thomas McDonald, the Landlord's Legal Representative Landlords' Legal Representative J. Herter and the Tenants attended the hearing.

Determinations:

1. 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 October 31, 2023.
2. The Tenants was in possession of the rental unit on the date the application was filed.
3. On March 28, 2022, the Landlord gave the Tenants an N13 notice of termination with the termination date of July 31, 2022 deemed served the same day. The Landlord claims vacant possession of the rental unit is required for conversion to non-residential use.

Landlord's evidence

4. The Landlord intends to convert the rental unit into an office. The corporate Landlord needs a full-time accountant and currently Landlord's representative TM is running the corporate office from his room in his own residence. The company needs to centralize the operations and have a dedicated office space as operations grow. Therefore, they served the Tenants with a N13 notice. He further testified that no permits were required for the same.

5. The Landlord's Legal Representative submitted that residential use of the property is no longer in accordance with the corporation's growth strategy. The unit is only 600 sq. ft and ideal to be converted to non-residential use with its proximity to the farm as well. A construction estimate was tendered into evidence for converting the property to an office.

Tenants' testimony

6. The Tenant Athena Calvo ('AC') testified that they believe that the Landlord has served the N13 in bad faith since the Landlord is stating in the N13 that the Landlord intends to leave the rental unit vacant for the foreseeable future when the Landlord has spent thousands of dollars to update and renovate the property.
7. She testified that the Tenants had moved into the rental unit just nine months prior to being served with a N13. The rental unit she added was fully renovated and there is no way the Landlord could put in so much money to renovate it and then convert it to an office space. The Tenants wanted this to be a long-term rental and left another reasonable long-term rental unit to move here because they saw an opportunity to build a family here. TM never mentioned to them that he has plans to build an office here. The house is built as a residential property and not an office.
8. The Tenant JL was questioned if he knew that the Landlord owned a farm around the property and that the Landlord accessed the farm via the property. JL testified that he did know that the Landlord accessed the farm via the property and that has been a bone of contention between the parties and some aggressive encounters with TM. There have been issues about the extent of the rental unit and the Landlord has come and gone as he pleases without proper notice. AC added that the Tenants are at a huge disadvantage in this.
9. The Tenant believes that their negative encounters around the farm access has led to this N13 being filed because when they agreed to rent the property, a friend of the Tenants who was a tenant at the same property ten years ago, had told them that the Landlord hardly visits and stays away from the rental unit but that has not been the case in their situation. The Landlord has encroached upon the outside area of the property multiple times.

Analysis and Law

10. The N13 was served pursuant to section 50(1)(b) 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.
11. The courts have provided significant guidance to the Board in interpreting the "good faith" requirement in the context of a landlord seeking possession of a rental unit for the purpose

of occupation by the landlord. I find that this guidance is also applicable to a notice served under section 50.

12. In *Feeny v. Noble*, 1994 CanLII 10538 (ON SC), 19 O.R. (3d) 762, the Ontario Divisional Court considered this issue in the context of subsection 103(1) under the Landlord and Tenant Act, R.S.O. 1990, c. L.7, and held that:

“...the test of good faith is a genuine intention to occupy the premises and not the reasonableness of the landlord’s proposal”.

13. In *Salter v. Beljinac*, 2001 CanLII 40231 (ON SCDC), [2001] O.J. No 2792, the Divisional Court revisited the issue under subsection 51(1) of the Tenant Protection Act, 1997, S.O. 1997, c. 24. The court referred to *Feeney*, supra, and held that:

“...the legal standard for the Tribunal as finder of fact remains the same under s. 51(1) of the TPA as seen in the case law interpreting s. 103(1) of the LTA.”

14. More recently, in *Fava v. Harrison*, 2014 ONSC 3352 (CanLII) the Divisional Court, in considering this issue in the context of the Residential Tenancies Act, 2006, found as follows:

“We accept, as reflected in *Salter*, supra, that the motives of the landlord in seeking possession of the property are largely irrelevant and that the only issue is whether the landlord has a genuine intent to reside in the property. However, that does not mean that the Board cannot consider the conduct and the motives of the landlord in order to draw inferences as to whether the landlord desires, in good faith, to occupy the property.”

15. The Tenant did not seriously contradict the Landlord’s evidence of their intention to use the rental unit as office space as the needs of the corporation were changing and they needed full-time people working from a centralized location. The Tenants testified that they were misled to believe it would be a long-term rental. They referred to a friend who witnessed most of the initial conversations between the parties, but he was not called upon as a witness.
16. The Tenant’s evidence about their own circumstances will be addressed under section 83 considerations below. While the Tenants testified about a N5 served on them and the intrusions of the Landlord on the rental unit, those are not a part of consideration for an application under s.50 of the Act. The Tenants can raise their own application if they choose for illegal entry claims.
17. Hence, I find that the Landlord establishes that the Landlord genuinely intends to convert use the rental unit for office space after the Tenants vacate. I find that converting a residential unit to an office space, is conversion to non-residential use. The Landlord will not be renting it out for residential use again and will be using the rental unit as an office space for the foreseeable future. No one will be occupying the unit for residing there.
18. The Tenants do have recourse if the Landlord fails to keep the rental unit in a non-residential use after they vacate.

Permits

19. Section 73 of the Act states:

- a) 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. The Landlord must also establish, on a balance of probabilities, that all necessary permits or other authority that may be required to carry out the activity have been obtained or that all reasonable steps have been taken to obtain all necessary permits or other authority that may be required to carry out the activity or that it is not possible to obtain the permits or other authority until the rental unit is vacant.

21. I am satisfied that no permits are required to convert the rental unit to an office space in a rural farmland area. While the Landlord bears the burden of proof in this application, credible testimony can meet this burden of proof. It is also difficult to expect the Landlord to produce documentary evidence to prove a “negative”, i.e. that permits are not required to do something. The Tenant did not produce any evidence that any permits were required to convert the unit to non-residential use or to keep it vacant.

Compensation and last month's rent deposit

22. 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 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.

23. The Landlord's Representative, Thomas McDonald ('TM') is the president of the Landlord corporation and he testified that it has provided one month's rent in compensation to the Tenant pursuant to section 52(2) of the Residential Tenancies Act, 2006 (the 'Act'). The Tenants were advised to come and collect the cheque from the Landlord's Legal Representative's office, on May 6, 2022 via a phone call and subsequent emails were sent too. The Tenants confirmed they received the phone call of possible compensation. The amount of compensation is lying 'In-Trust' with the Landlord's legal representative's office.

24. I am satisfied that the Landlord's intention is clear as to provide the Tenant's with the required compensation pursuant to s.52(2) of the Act but the Tenants have not collected

the same. The Landlord shall pay the Tenant's the compensation by September 10, 2023 by delivering the same to the rental unit.

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

Section 83 considerations

26. 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 October 31, 2023 pursuant to subsection 83(1)(b) of the Act. The Tenants have had additional time since the hearing to find a suitable rental unit but a further brief delay will not be highly prejudicial to the Landlord.
27. JL testified that since they were served the N13 the Tenants have been taking steps towards finding other comparable units, but the rent has doubled since then. The higher rents are beyond their means, and they moved out of the city to the countryside to grow a family. In their last search a week before the hearing similar units were renting for \$2,800 with utilities and their rent is \$1,400.00 including utilities.
28. JL did not know how long they need to move out of the rental unit at the time of the hearing and would prefer to stay here instead.
29. Even though I understand and empathize with the Tenants' concerns about rising rental costs that is an insufficient be a reason to keep a Landlord from converting his rental unit to non-residential use if that's his genuine intention to do so.

It is ordered that:

1. The Landlord shall pay the Tenant compensation equal to one month's rent on or before September 10, 2023.
2. If the Landlord complies with paragraph one above, the tenancy between the parties is terminated as of October 31, 2023.
3. If the unit is not vacated on or before October 31, 2023, then starting November 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 November 1, 2023.
- 5.

August 29, 2023
Date Issued

Sheena Brar
Member, Landlord and Tenants 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 Tenants expires on March 10, 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.

2023 ONL TB 59141 (CanLII)