



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

Citation: 2513824 Ontario Inc. v Drouillard, 2023 ONLTB 54908

Date: 2023-08-14

File Number: LTB-L-022832-23

In the matter of: 12, 561 LOUIS AVE
WINDSOR ON N9A1W7

Between: 2513824 Ontario Inc. Landlord

And

Ryan Marc Drouillard Tenant

2513824 Ontario Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ryan Marc Drouillard (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 June 28, 2023.

The Landlord's Agent Karen Baron, the Landlord's representative Richard Lammers, the Tenant, and his representative Tori Lee Jenkins attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities the grounds for termination of the tenancy. However, pursuant to section 83 of the *Residential Tenancies Act, 2006* ('the Act') relief from eviction is granted in the form of a dismissal of the application.
2. The Tenant was in possession of the rental unit on the date the application was filed.
3. On March 16, 2023, the Landlord gave the Tenant an N13 notice of termination with the termination date of July 31, 2023. The Landlord claims vacant possession of the rental unit is required to convert the rental unit to non residential use, namely, to create a commercial storage and maintenance room for the Landlord. The Landlord also wishes to create a bike storage room for all residents of the rental property.
4. The rental unit is a three-story building with 14 units.
5. Karen Baron ('K.B') is the property manager of the rental property. K.B testified that the Landlord intends to convert the rental unit bedroom into storage space for items related to the upkeep of the rental property, and business documents, and to install a workbench for maintenance needs. The items that would be stored include paint, glue, carboard, wood,

drywall, baseboards, papers, ceramic tiles, flooring, grout materials, and business documents etc. The bathroom would also be used by maintenance workers. The Landlord wants to use the rental unit living room for bike storage for the building.

6. K.B testified that there is maintenance work that occurs at the building almost every day, but there is currently no suitable place for it to occur.
7. K.B testified that the rental unit is the most desirable unit as it is closest to the exit door.
8. I find on a balance of probabilities that the Landlord requires the rental unit to be vacated because the Landlord in good faith intends to convert it to a non-residential use. I make this finding because I found K.B to be credible in her testimony as it was offered in a forthright manner and withstood cross examination well. Additionally, I find that the intended use is non-residential because the items intended to be stored are business items not personal items, and maintenance work will be conducted in the unit. While the bike storage area will be a common area for all residents and therefore may be a form of residential use, the predominate use of the unit will be for storage of the Landlord's maintenance materials, business documents, and maintenance workspace.
9. The Landlord does not require a building permit to convert the rental unit into storage or maintenance space.

Relief from Eviction

10. Subsection 83(1) of the Act states:

Upon an application for an order evicting a tenant, the Board may, despite any other provision of this Act or the tenancy agreement,

- a) Refuse to grant the application unless satisfied having regard to all the circumstances, that it would be unfair to refuse; or
- b) Order that the enforcement of the eviction order be postponed for a period of time.

11. According to section 83, I am required to consider all the circumstances in the case including both parties' situations to determine if it would be appropriate to evoke section 83 relief.
12. The Tenant has lived in the rental unit for 8 years. His only source of income is ODSP from which he receives less than \$1,200.00. The Tenant suffers from severe anxiety and depression and has been suicidal. The Tenant also has cancer which requires him to take 4 different medications every day. The Tenant testified that he has looked for other rental units, but they cost at least \$1,200.00 monthly which is equivalent to his entire monthly income. The Tenant testified that he does not have friends who could assist him and if evicted he would be forced to move in with his mother. However, his mother has a small two-bedroom apartment and does not want another adult living with her. The Tenant testified that he was not sure how long he would need to find somewhere new to live but given 6 months he could find a place.

13. K.B testified that the Landlord does have access to a garage for storage, but it has no heating, and is infested with rats, and insects. Items have also gone missing from the garage and K.B testified that maintenance workers do not feel safe working in the garage.
14. K.B testified that the maintenance workers also need access to a washroom, but it is not feasible to put a washroom in the garage because of space concerns. K.B testified that it would be too costly to heat and put plumbing in the garage.
15. K.B testified that the rental property's boiler room is also not suitable for storage as the fire department told the Landlord that they cannot store flammable products in that room and the Landlord needs to be able to have unobstructed access to various areas in that room.
16. K.B testified that Richard Barron ('R.B') is the director of 2513824 Ontario Inc. R.B is retired and wants to take on more of the maintenance work to reduce building costs. However, R.B is 71 years old with breathing difficulties and he requires a cleaner area than the garage or boiler room to do work in.
17. K.B testified that the Landlord cannot use the office area for storage because clients visit the room and having workmen in and out of there would not be feasible.
18. K.B testified that tenants constantly park their bikes in the front area because there is no storage for them, and bike thefts have occurred.
19. Under cross examination K.B testified that the problem with lack of storage has existed for the 11 years that she has worked for the Landlord. K.B testified that an application was not brought previously because the Landlord did not want to give up the rental income for a unit.
20. When I consider the totality of the factors that were disclosed at the hearing, I find that the unfairness to the Tenant of granting the application far outweighs the unfairness to the Landlord of denying the application and the Tenant would experience significant hardship if he was forced to move out of the rental unit. The evidence does not support that the Landlord will be similarly prejudiced if the application is not granted. Accordingly, I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act, and find that it would not be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. In making that determination I have considered that the Landlord's lack of storage space has been a problem for at least 11 years. As such I'm not satisfied that the problem requires an urgent solution. While the Tenant's rental unit is closest to the exit door, there are three other units on the first floor. While currently tenanted, the Landlord could wait until one of those units become available. Additionally, the Landlord led no evidence regarding why off-site storage could not be used for the business documents that do not need to be accessed every day. I am also not satisfied that the Landlord has maintenance workers who do work nearly every single day as stated by K.B. The rental property has 14 units, and such a constant maintenance schedule is inconsistent with that number of units. Additionally, while the Landlord stated that it would be too expensive to make the existing garage more suitable, the Landlord did not lead any evidence about what those costs would be.
22. While the Landlord will continue to have space limitations if the application is denied, the Tenant will lose their home if the application is granted. The Tenant suffers from anxiety,

depression, has had suicidal tendencies, and has cancer. He has also lived in the rental unit for 8 years. While the Tenant stated that he may be able to live with his mother in her small two-bedroom apartment or could find a new place to live despite his extremely limited income with a significant postponement of the eviction, that the Tenant may have other less desirable options does not mean that relief cannot be granted pursuant to section 83 of the Act. The test concerns fairness. Given the lack of urgency for the Landlord's storage use, that other rental units could become available, and that the Landlord led insufficient evidence to establish that they cannot make their current storage options more suitable, I am not satisfied that it would be unfair to refuse to grant the application.

Compensation

23. As of the hearing date the Landlord had not yet paid compensation to the Tenant as the date of termination in the N13 notice had not yet passed. If the Landlord has since paid compensation, pursuant to section 73.1 of the Act the Tenant is to repay the compensation.

It is ordered that:

1. The Landlord's application is dismissed.
2. If the Landlord has paid the Tenant compensation, the Tenant is to return the compensation to the Landlord on or before August 31, 2023.
3. If the Tenant does not pay the Landlord the full amount owing on or before August 31, 2023 the Tenant will start to owe interest. This will be simple interest calculated from September 1, 2023 at 6.00% annually on the balance outstanding.

August 14, 2023

Date Issued

Amanda Kovats
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.