



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

Citation: 766579 Ontario Ltd. v Rios Negrete, 2023 ONLTB 54229

Date: 2023-08-03

File Number: LTB-L-003397-22

In the matter of: 19, 299 FORMAN AVE
TORONTO ON M4S2S6

Between: 766579 Ontario Ltd. Landlord

And

Maria Rios Negrete Tenant

766579 Ontario Ltd. (the 'Landlord') applied for an order to terminate the tenancy and evict Maria Rios Negrete (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 July 21, 2023. The Landlord, Landlord representative Kimberly Pesino, the Tenant, and Tenant representative Karly Wilson attended the hearing. John Craig Babe ('JCB') appeared as a witness for the Landlord. Marcelo Varrera-Oro provided Spanish translation service to the Tenant.

Determinations:

1. The residential complex is a multi-unit building.
2. The Tenant was in possession of the rental unit on the date the application was filed
3. On November 29, 2021, the Landlord gave the Tenant a notice of termination under subsection 50(1) of the *Residential Tenancies Act, 2006* (the 'Act') with the termination date of March 31, 2022.
4. There are two conditions which the Landlord must meet before the Board can consider granting an eviction order. According to subparagraph 50(1)(c) of the Act, the Landlord must establish that: (1) a building permit is required; and (2) vacant possession of the rental unit is required. These are two separate conditions, and each must be satisfied.
5. The Tenant does not dispute that there is a current Inspection Order from the Toronto Fire Services ('TFS') requiring work to be performed under the *Fire Protection and Prevention Act* and that this work must be completed by February 29, 2024.
6. The Tenant also does not dispute that the work to be performed is so extensive that a building permit is required. Given this, the only issue before me is whether the Landlord has established that vacant possession of the rental unit is required.

Is vacant possession required?

Landlord's evidence

7. JCB appeared as a witness for the Landlord. He detailed his qualifications and his 34 years' experience as an architect familiar with all aspects of fire and building code. He is the project manager for the rehabilitation of the residential complex.
8. JCB testified that vacant possession is required for several reasons. He stated that the scope of the work to be performed is such that the unit must be vacant. He explained that there will be temporary barrier walls constructed in the corridor. There will be demolition, a large amount of dust and debris, noise, and construction tools and workers. They would be unable to ensure the health and safety of the Tenant unless the unit was vacant.
9. JCB further explained that the bachelor unit will be without a door and there is no other means to access the unit. He stated that there is a lot of equipment required for the work and workers would be unable to safely work with the Tenant's belongings in the unit. They would also be unable to guarantee the safety of those belongings. Given this, the contractors are required to carry liability insurance and that this insurance does not cover injury to tenants or the loss or damage of their belongings.
10. The Landlord admitted into evidence a series of videos and photographs depicting the repairs. The videos support JCB's statement that the work is noisy and there is a lot of debris and dust.
11. The Landlord stated that the construction area must be cordoned off and she would not have the control to provide access. She is unable to guarantee belongings would not be damaged. She indicated that the contractor will not perform the work without vacant possession given their liability insurance.

Tenant's evidence

12. The Tenant acknowledges that the work to be performed is so extensive that she cannot physically reside in the rental unit. She did not present any evidence challenging the Landlord's evidence as to why vacant possession is required. It is the Tenant's position that her belongings can be stored in the rental unit during the repairs, or in the alternative, she can be moved to one of the vacant units.

Analysis

13. The repairs listed in the N13 notice and as described by JCB are extensive. Walls will be removed, temporary barrier walls will be constructed, units will be without doors, portions of the unit will be re-wired, and there will be a large amount of construction activity. Clearly this work would be significantly disruptive to the Tenant and the Tenant acknowledges this given she accepts that she cannot physically reside in the unit.

14. The Tenant did not present any evidence challenging the evidence of the Landlord or JCB that the contractors require vacant possession of the rental unit to perform the work.
15. As noted above, the Tenant does not dispute that the Landlord is required to do the extensive repairs as ordered by the TFS. Tenant representative, however, suggests that what the Landlord is really doing is launching a mass eviction campaign.
16. The Landlord does not dispute that she has served notices of termination to tenants in the building for persistent late payment of rent and non-payment of rent. Landlords are entitled to enforce their rights by giving tenants proper notices of termination when warranted and by filing applications at the Board. In my view, the fact the Landlord exercised her right to serve notices of termination does not establish that she does not, in good faith, intend to carry out the repairs as detailed in the N13 notice.
17. I accept that the Landlord would be unable to safeguard the Tenant's belongings during the repairs and that the contractors require vacant possession to perform the work. Based on the evidence before me, I find that vacant possession is both necessary and required.
18. Tenant representative submits that for the Board to order the eviction, I must be satisfied that the Landlord will complete the repairs and that the Landlord will allow the Tenant the right to return to the rental unit. I do not agree.
19. The legal test before me in this type of an application is whether a building permit and vacant possession is required. The Landlord has met both conditions and therefore, has proven her application on a balance of probabilities.
20. The Landlord acknowledges that 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 her 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.
21. It is undisputed that the Landlord is not required to compensate the Tenant.
22. The Landlord collected a rent deposit of \$850.00 from the Tenant and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$139.35 is owing to the Tenant for the period from February 12, 2013 to March 31, 2022.
23. In accordance with subsection 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Section 83 considerations

24. Section 83 of the Act provides that the Board may refuse to grant the eviction or postpone the eviction.

25. I understand the Tenant's desire to remain in the building and to be moved to another unit. The Landlord, however, is not required to offer another unit. Furthermore, the Act does not allow me to create a new tenancy at another unit.
26. The Tenant has resided at the rental unit ten years. She enjoys the location of the rental unit as its proximity allows her to walk to work.
27. The evidence before me establishes that the Landlord would be subject to a fine of up to \$20,000.00 a day if she fails to comply with the Inspection Order by the deadline of February 29, 2024.
28. I have weighed the circumstances of the Tenant against the circumstances of the Landlord and find it would be unfair to deny the eviction given the Landlord's obligation to comply with the Inspection Order. In accordance with subsection 83(2) of the Act, however, I find it would not be unfair to postpone the eviction until November 30, 2023, pursuant to subsection 83(1)(b) of the Act. JCB testified the repair work will take approximately three months to complete. I accept the Landlord's evidence that given the deadline, she would require vacant possession no later than November 30, 2023.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated as of November 30, 2023. The Tenant must move out of the rental unit on or before November 30, 2023.
2. 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.
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 December 1, 2023.
4. The Landlord owes the Tenant \$139.35, which is the amount of interest on the rent deposit.
5. If the Landlord does not pay the Tenant 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 6.00% annually on the balance outstanding.

August 17, 2023
Date Issued

Dawn Sullivan
Vice Chair, 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 June 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.