



**Order under Section 77(8)  
Residential Tenancies Act, 2006**

**Citation:** Rintoul v Russell, 2023 ONLTB 49319

**Date:** 2023-07-13 **File Number:**  
LTB-L-018999-23-SA

**In the matter of:** 20 ACORN CRESCENT  
WASAGA BEACH ONTARIO L9Z1L6

**Between:** Ross Rintoul Landlords  
Brenda Rintoul

**And**

Rob Russell Tenants  
Kelly Arrowsmith

Ross Rintoul and Brenda Rintoul (the 'Landlords') applied for an order to terminate the tenancy and evict Rob Russell and Kelly Arrowsmith (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

The Landlords application was resolved by order LTB-L-018999-23, issued on March 10, 2023. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-018999-23.

The motion was heard by videoconference on April 5, 2023.

The first-named Landlord attended the hearing. The first-named Tenant attended the hearing.

**Determinations:**

1. The Landlords and Tenants entered into an agreement to terminate the tenancy as of February 28, 2023.
2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-018999-23.
3. The following facts are not in dispute:

- a. The parties entered into a fixed term tenancy agreement on December 2, 2020, which was to commence on January 1, 2021. The agreement contained a provision that the tenancy was to end on June 30, 2022 and would not be renewed.
- b. The agreed upon reason the Tenants were to vacate the rental unit on June 30, 2022, was because the Landlords planned to renovate the rental unit before selling it at the end of the fixed term tenancy. The parties understood that the Landlords

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required vacant possession of the rental unit to perform renovations requiring building permits.

- c. The parties signed a written agreement and agreed to the aforementioned terms prior to the commencement of the tenancy.
- d. The parties signed an N11 Agreement to End the Tenancy form on December 31, 2022. The parties agreed to terminate the tenancy on February 28, 2023.

### Analysis

4. For reasons that follow the agreement to terminate the tenancy is void on two grounds and, as such, the motion is granted pursuant to subsection 77(8) of the *Residential Tenancies Act, 2006* (the 'Act') .
5. First, the agreement is void as it contravened subsection 37(5) of the Act which provides that an agreement between a landlord and tenant to terminate a tenancy is void if it is entered into at the time the tenancy agreement is entered into, or as a condition of entering into the tenancy agreement.
6. As the agreement was entered into both at the time the parties entered into the tenancy agreement, and as a condition of the agreement, the agreement is void pursuant to subsection 37(5) of the Act.
7. Secondly, the agreement is also void as it contravened subsection 50 of the Act and, by operation of section 4 of the Act, the agreement is rendered void.
8. Section 50 of the Act provides that a landlord who wishes to perform repairs or renovations to the rental unit that are so extensive that they require a building permit and vacant possession of the rental unit may give notice of termination of a tenancy with a date of termination that is at least 120 days after the notice is given. Section 50 also provides that a tenant can exercise their first right of refusal.

9. Subsection 4(1) of the Act provides that a provision in a tenancy agreement that is inconsistent with the Act is void.
10. As the purpose of the agreement was to evict the Tenants in order to obtain vacant possession of the rental unit to perform extensive renovations requiring a building permit, the agreement contravenes section 50 of the Act. What follows is that by operation of section 4 of the Act, the agreement is rendered void as it contained a provision that was inconsistent with the Act.
11. Subsection 77(8)(a) of the Act provides that if a tenant makes a motion to have an order made under section 77 set aside the Board shall, after a hearing, make an order setting aside the order if the landlord and tenant did not enter into an agreement to terminate the tenancy, and the tenant did not give the landlord notice of termination under the tenancy.

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12. As the agreement entered into by the Landlords and Tenants is void for the two reasons outlined above, and the Tenants did not give the Landlords a notice of termination of the tenancy, by operation of subsection 77(8)(a) of the Act, the Tenants motion must be granted setting aside Board order LTB-L-018999-23. An order will issue accordingly.

**It is ordered that:**

1. The motion to set aside Order LTB-L-018999-23, issued on March 10, 2023, is granted.
2. Order LTB-L-018999-23, issued on March 10, 2023, is set aside and cannot be enforced.

**July 13, 2023**

**Date Issued**

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Emile Ramlochan

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto  
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.