



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

Citation: Bakroun v Almajdalawi, 2023 ONLTB 46488

Date: 2023-06-28

File Number: LTB-L-018445-22

In the matter of: BASEMENT, 560 OLD HARWOOD AVE AJAX
ON L1T3L1

Between: Mazen Bakroun Landlord

And

Najah Almajdalawi and Omar Almajdalawi Tenants

Mazen Bakroun (the 'Landlord') applied for an order to terminate the tenancy and evict Najah Almajdalawi and Omar Almajdalawi (the 'Tenants') because:

- the Landlord requires possession of the rental unit in order to demolish the unit.

The Landlord also claimed compensation for each day the Tenants remained in the unit after the termination date.

This application was heard by videoconference on June 19, 2023.

The Landlord, Landlord's legal representative Jordan Nieuwhof and the Tenant Omar Almajdalawi attended the hearing. The Tenant confirmed he has authorization to speak on behalf of the first named Tenant. The Tenant did not speak with Tenant Duty Counsel on the date of the hearing but said he sought legal counsel prior to the hearing.

Determinations and Reasons:

Preliminary Issue – Compensation

1. 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 Tenants in an amount equal to one month's rent by the termination date.

2. At the hearing, the Landlord said that compensation had not been satisfied as required despite the efforts of the Landlord. There was no dispute that the Landlord issued to the Tenants \$1,100.00 by way of e-transfer on July 5, 2022. When it was not accepted by the Tenants, the Landlord followed up with the Tenants by text message on July 29, 2022 and again on August 12, 2022 by letter. The Tenant did not dispute receipt of the e-transfer but chose not to accept it and said he was advised not to accept the compensation payment.
3. During the hearing, the Landlord re-issued the compensation by e-transfer and the Tenant acknowledged receipt of the e-transfer. Accordingly, the Landlord's obligations have been satisfied.

The Landlord's L2 Application and N13 Notice of Termination

4. 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 shall be terminated as detailed below.
5. The Tenants were in possession of the rental unit on the date the application was filed.
6. The rental unit is a basement unit in a single family home and occupied by the Tenant and his family of six including 2 minor children. The main floor is occupied by another tenant. The tenancy began around September 2019 and the lawful monthly rent is \$1,100.00.
7. On March 21, 2022, the Landlord gave the Tenants an N13 notice of termination with the termination date of July 31, 2022. The Landlord claims vacant possession of the rental unit is required for demolition.
8. The Landlord said he requires the rental unit to be vacated because the Landlord in good faith intends to demolish it.

Testimony and Evidence

9. The Landlord's disclosure package included: notices, permits, technical drawings, communications, photographs and the lease agreement.
10. The Tenants' disclosure package included various documents, correspondence and photographs.
11. Although this order does not specifically address each piece of evidence individually or reference all of the testimony, I have considered all of the evidence and oral testimony when making my determinations.

12. The key issue in this application is whether the Landlord's project is best characterized as a renovation, conversion or as a demolition, for the purposes of the *Residential Tenancies Act, 2006* (the 'Act').
13. It was the testimony and evidence of the Landlord that when he purchased the rental unit around 2018, he was unaware that the rental unit in the basement is non compliant with municipal requirements and is therefore illegal. He said that in order to bring the rental unit into compliance, he would need to invest approximately \$50,000.00 to \$80,000.00 and he is not in a financial position to do so.
14. The Landlord testified that the residential complex is approved as a single family home and the Landlord is not permitted to have the basement accessory apartment. Accordingly, the work contemplated includes but is not limited to, complete removal of the kitchen and all associated electrical and plumbing connections and removal of the washrooms. There is an issue with ceiling height and other deficiencies. The Landlord said that he has been advised by various city officials to demolish the rental unit and return the residential complex to a single family dwelling. He also said that city officials have followed up with the required work on two occasions and have reminded the Landlord of the penalty for non-compliance.
15. It was the position of the Landlord that he is concerned about the potential penalty from the city if there is further delay and said his insurance coverage is compromised due to the circumstances and this places him in a difficult position.
16. The Landlord said that although he was not ordered to demolish the rental unit, he has been strongly encouraged to demolish the unit by city officials and he simply cannot afford to undertake the steps required to bring the rental unit into compliance. The Landlord led financial evidence to support this proposition.
17. It was the position of the Landlord that the footprint of the rental unit will drastically change, there will be no kitchen nor washroom facility and the unit will cease to exist. As such, he could not provide the Tenant with right of first refusal.
18. The Tenant took the position that the Landlord served the N13 in bad faith as a result of the Tenant's refusal to pay higher rent. The Tenant did not adequately challenge the documentary evidence of the Landlord with respect to the issue of non-compliance. The Tenant acknowledged that the rent from the start of the tenancy to the date of the hearing remains to be \$1,100.00 per month. The Tenant did not provide any notice of rent increase or communication to support his claim.
19. The Tenant claims that the Landlord has had several strategies over the years to terminate his tenancy.

Daily Compensation and Rent Deposit

20. The Tenants were required to pay the Landlord \$11,681.10 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to June 19, 2023. The Landlord said the Tenants are not in arrears of rent.
21. Based on the Monthly rent, the daily compensation is \$36.16. This amount is calculated as follows: \$1,100.00 x 12, divided by 365 days.
22. The Landlord collected a rent deposit of \$1,100.00 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit is owing to the Tenants for the period from September 1, 2019 to July 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.

Law and Analysis

24. The relevant portions 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.

25. The essential difference between a tenant's rights in a renovation situation and a tenant's rights in a demolition situation offers an indication as to how a demolition should be defined as opposed to an extensive renovation, for the purposes of the Act.
26. In a situation where the rental unit continues to exist, albeit 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. The fact that the Act distinguishes

renovations and demolitions by the tenant's right of first refusal shows that the intention of these sections of the Act is to preserve tenancies where it is possible to do so.

27. Accordingly, a project will be defined as a renovation under the Act in a case where it is possible for the tenant to move back into the unit and a project will be defined as a demolition where it is not possible for the tenant to move back into the unit.
28. At the hearing, I articulated the way to distinguish between a demolition and an extensive renovation and I gave the parties an opportunity to make submissions.
29. The Landlord's legal representative submitted that I should determine that the Landlord's project is a demolition, because the work that is to be done is so extensive that the rental unit will no longer exist. The kitchen and washrooms will be demolished, completely removed along with various electrical and plumbing connections and will not be replaced.
30. The Landlord's representative also detailed the challenges a landlord faces in these types of circumstances as the N13 form does not contemplate all scenarios. Relying on Board order CEL-72859-18, the Landlord takes the position that his application should be granted as the Landlord's good faith intention in filing the N13 notice lies somewhere between a demolition and a conversion. I agree with the presiding Member's finding and see no reason to deviate from his finding.
31. To clarify, the N13 notice of termination allows for three possible scenarios; the first being a need to demolish the rental unit; the second being a need to undertake extensive renovations to the rental unit that requires the tenant to move out until the work is completed so the tenant can move back in (under a legislated right of first refusal); and the third being a need to convert the rental unit into a non-residential unit.
32. In the present case, the fact story is similar to the order cited above. The Tenants must move out of the rental unit to allow for the required work to be undertaken and once complete, there will no longer be a tenable unit in the basement; therefore, no option for right of first refusal. The evidence presented at the hearing also confirms that the scope of work contemplated is that of a conversion and not a renovation which would allow a tenant to move back into the rental unit.
33. Based on the evidence before the Board and on a balance of probabilities, I am satisfied the Landlord will undertake to demolish the rental unit and the rental unit will cease to exist as once the work has been completed and the unit converted back to a single family dwelling, the Tenants would not have a place to return to.
34. Given all the above, I am satisfied that the Landlord in good faith requires possession of the Tenant's rental unit in order to demolish it. As such, the tenancy shall be terminated.

Discretionary Relief from Eviction

35. 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 July 31, 2023 pursuant to subsection 83(1)(b) of the Act.

36. In arriving at this conclusion, I considered the length of the tenancy, the composition of the family living in the rental unit, the financial circumstances of the Tenants and efforts made to find alternative housing. I have also considered the financial impact on the Landlord and potential penalties and insurance implications.
37. I find this delay will allow the Tenants some additional time to secure new living arrangements without causing unreasonable delay to the Landlord.
38. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before July 31, 2023.
2. If the unit is not vacated on or before July 31, 2023, then starting August 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 August 1, 2023.
4. The Tenants shall pay the Landlord compensation of \$36.16 per day for the use of the unit starting June 20, 2023 until the date the Tenant moves out of the unit.
5. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

June 28, 2023

Date Issued

Dana Wren

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 February 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.

