



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

Citation: 12895358 Canada Inc. v Kevin Tutty, 2023 ONLTB 39998

Date: 2023-05-31

File Number: LTB-L-062106-22

In the matter of: 1, 865 KING ST E
HAMILTON ON L8M1B5

Between: 12895358 Canada Inc. Landlord

And

Kevin Tutty Tenant

12895358 Canada Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Kevin Tutty (the 'Tenant') because:

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

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 May 17, 2023.

Only the Landlord’s Agent Ping Hus and the Landlord’s Legal Representative Ian Shemesh attended the hearing.

As of 10:56 a.m., the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the LTB. There was no record of a request to adjourn the hearing.

Determinations:

1. On October 4, 2022, the Landlord served the Tenant with an N13 notice to end your tenancy because the landlord wants to demolish the rental unit, repair it or convert it to another use (the ‘N13 notice’) and the N13 notice indicates that the Landlord intends to demolish the rental unit. The termination date indicated on the N13 notice was February 28, 2023.

2. 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 Tenant in an amount equal to one month's rent by the termination date or offer the Tenant another rental unit acceptable to the Tenant.
3. The Landlord's Agent 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') by mailing cheque #00356 dated February 4, 2023 in the amount of \$868.22 to the Tenant.
4. The Landlord's Agent testified that the work planned will render the rental unit completely uninhabitable and therefore required the Tenant to vacate the rental unit to allow for the rebuild of all three levels of the residential complex including:
 - Removing the interior walls and ceiling to expose electrical, plumbing and HVAC;
 - Replacing the ventilation duct work;
 - Replacing the electrical wiring and panels;
 - Replacement plumbing to accommodate a new layout;
 - Replacing the HVAC unit, boiler pipes, metal lines, systems and controls;
 - Mold remediation of the interior walls;
 - Removal of load and non-load bearing walls;
 - Demolition of one bathroom;
 - Installation of new insulation, new walls;
 - Reconfiguration of kitchen to new area;
 - Rebricking and resurfacing/refinishing exterior façade;
 - Installation of new windows and doors
5. The Landlord's Agent submits that the footprint of the rental unit will be changed such that the Tenant's unit is going to be combined with another rental unit to then make a 4 bedroom, 2 bathroom unit sharing one kitchen. The Tenant's unit will no longer exist once construction is completed.
6. The Landlord's Agent stated that he has applied for a building permit from the City of Hamilton but more information was required from the City of Hamilton before it would move forward with issuing the building permit. A copy of the application submitted to the City of Hamilton on March 29, 2023 was submitted into evidence at the hearing. The application states that the Landlord has paid the required amount to process the application and states that the work involves "adjoining the main floor apartment with basement apartment. Renovating second floor apartment with new plumbing and electrical with new layout". It was submitted that the Landlord needs to enter the unit to take further measurements and has not been able to gain entry.
7. Section 73 of the *Act* states:

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.

- 8. Based on the uncontested evidence and submissions before me, I am satisfied that the Landlord has taken all reasonable steps to obtain the necessary permits but for more information required from the City prior to the issuance of the building permit.
- 9. As explained by the Divisional Court, the context in which the Legislature used the word “demolish” makes clear that the destruction or even a significant change to the rental unit is not enough. In *Two Clarendon Apartments Limited v. Sinclair*, 2019 ONSC 3845 (CanLII), the issue was whether the work proposed by the landlord constituted a renovation or a demolition for the purposes of subsection 50(1) of the Act. The Board had found that there was a renovation because the unit would be available in the same floor space, albeit reconfigured and extensively rebuilt. The Court upheld the following interpretation of the word “demolish” as reasonable and consistent with the Act and modern principles of statutory interpretation:

13. 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 no longer there and so the tenant cannot move back. The fact that the Act Distinguishes renovations and demolitions by the tenants right of first refusal shows that the intention of these sections of the Act is to preserve tendencies where it is possible to do so.

14. 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.

The Divisional Court in *Two Clarendon Apartments Limited* also found that the Board's decision was consistent with the result in *Corbett v. Lanterra Developments*, 2014 ONSC 3297 (CanLII) (Div. Ct), at paragraph 14, where there was a demolition permit, and the construction resulted in different units from those demolished, so that the tenant could not move back into the rental unit.

10. The Landlord's Agent stated that they have served a prior N13 notice which was disposed of on May 1, 2023 as a consent order for LTB-L-062116-22.
11. I am satisfied that the Landlord has provided sufficient evidence, on a balance of probabilities, to support their claim that it genuinely intends to demolish the rental unit and served the Tenant with the N13 notice for this and no other improper purpose.
12. The Landlord's Agent stated that as the Tenant was living in the rental unit when it became Landlord, he believes the Tenant has resided in the rental unit for approximately 7 or 8 years and lives in the rental unit by himself.
13. The Landlord's Legal Representative stated that he had spoken with the Tenant in early April, 2023 regarding this matter and the Tenant sent an email communication to the Landlord's Legal Representative stating that he intends to stay in the rental unit and he would discuss the matter further at the hearing. The Landlord's Agent and Legal Representative were unaware of any further factors to consider with respect to relief from eviction.
14. The Landlord's Agent requested that 60 days notice be provided to the Tenant to vacate the rental unit notwithstanding that the Tenant received the N13 notice in October, 2022. I find this request to be reasonable and 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*.
15. This order contains all of the reasons in it and no further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant 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. If the unit is not vacated on or before July 31, 2023, the Tenant shall pay to the Landlord \$27.85 per day for compensation for use of the unit starting August 1, 2023 to the date the Tenant moves out of the unit.

May 31, 2023

Date Issued

Heather Chapple

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.