



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

Citation: Bronte Harbor Club Inc. v Ken Tomcheski, 2023 ONLTB 36594

Date: 2023-05-23

File Number: LTB-L-038634-22

In the matter of: 10, 2432/2448 LAKESHORE RD W
OAKVILLE ON L6L1H7

Between: Bronte Harbor Club Inc. Landlord

And

Ken Tomcheski Tenants
Rosslyn Tomchheski

Bronte Harbor Club Inc. (the 'Landlord') applied for an order to terminate the tenancy and evict Ken Tomcheski and Rosslyn Tomchheski (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 May 2, 2023. The Landlord's representative, Teresa Baykara, attended the hearing. As of 10:20 am, the Tenants were 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. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

1. 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 between the Landlord and the Tenants is terminated, and the Tenants must move out of the rental unit on or before June 15, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed, and the Tenants' unit is one of 14 in the residential complex.

N13 Notice of Termination

3. On April 1, 2022, the Landlord gave the Tenants an N13 Notice of Termination (N13) with the termination date of July 31, 2022. The Landlord's representative submitted that the N13 was slid under the Tenants' door, and posted on the door, on April 1, 2022. I therefore find that the N13 was deemed served to the Tenants on April 1, 2022. The Landlord claims vacant possession of the rental unit is required for the demolition of the unit.

Good Faith and Demolition Permit

4. The N13 was served pursuant to section 50(1) of the *Residential Tenancies Act, 2006* (Act), and any order terminating a tenancy must be in accordance with s. 73 of the Act. Section 73 requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N13 Notice, the Landlord intends in good faith to demolish the rental unit.
5. The Landlord's representative submitted that the Landlord served the Tenants three previous N13s on April 1, 2021, August 13, 2021, and on October 5, 2021 for the demolition of the unit; however, the Landlord was unable to obtain a demolition permit from the municipality for the demolition of the residential complex, and therefore never filed an L2 application with the Board for these notices. The representative submitted further that a permit for the demolition of the residential complex of 14 units was finally received from the Town of Oakville on April 5, 2022, and this prompted the Landlord to serve the current N13 to the Tenants, and to file this L2 application with the Board on July 11, 2022. The Landlord submitted the demolition permit to the Board.
6. On the basis of the Landlord's uncontested evidence, I am satisfied that the Landlord in good faith intends to demolish the rental unit and the residential complex, and therefore requires the rental unit to be vacant.

Compensation

7. I am satisfied that the residential complex contains at least five residential units and the demolition was not ordered to be carried out under the authority of any other Act.
8. Accordingly, s. 52(1) of the Act requires a landlord to compensate a tenant in an amount equal to three month's rent, or offer a tenant another rental unit, if the landlord seeks to terminate the tenancy for the purpose of the demolition of the rental unit. Section 55.1 of the Act requires this compensation to be paid no later than on the termination date specified in the notice of termination of the tenancy. In addition, s. 83(4) of the Act provides that no eviction order shall be issued in a proceeding regarding a termination of a tenancy for the purpose of residential occupation unless the landlord has complied with section 52(1) of the Act.

9. The Landlord's representative submitted that the Landlord provided a cheque to the Tenants for \$2,587.56, representing three months rent, on April 1, 2022; however, the Tenants declined the cheque payment on April 1, 2022, as well as on multiple dates thereafter. The representative submitted further that the Landlord also offered to waive three month's rent, but the Tenants did not accept any waiving of the rent, and continued to promptly pay their rent. The Landlord submitted a copy of a letter sent to the Tenants, dated March 22, 2023, detailing the Tenants' failure to accept compensation and relocation assistance from the Landlord.
10. I accept that s. 55.1 of the Act requires that a landlord compensate a tenant no later than the termination date set out in the applicable N13. However, a tenant cannot frustrate the ability of a landlord to provide compensation by refusing to accept compensation offered by a landlord, for example, by declining a compensation cheque provided by the landlord or by failing to accept the waiving of rent.
11. On the basis of the evidence provided, I find that the Landlord met their obligation to pay the Tenants compensation equal to three month's rent in accordance with s. 52(1) and s. 55.1 of the Act, by providing the Tenants with a cheque for \$2,587.56, representing three months rent, on April 1, 2022 – before the termination date of July 31, 2022.
12. The Tenants' failure to accept the cheque payment, and refusal of the Landlord's attempts to waive three month's of rent, do not invalidate the Landlord's service of the compensation payment before the termination date. However, if the tenancy is terminated, the Tenants shall be compensated before the termination of the tenancy, pursuant to s. 83(4) of the Act.
13. Subsection 190(2) of the Act provides the Board with the jurisdiction to extend time requirements except for those identified in s. 56 of *Ontario Regulation 516/06* to the Act. Section 55.1 of the Act is not identified in s. 56 of the Regulation. Therefore, I am, to the extent necessary, exercising my discretion under s. 190(2) of the Act to extend the time for the Landlord to compensate the Tenants.
14. If the tenancy is terminated, the Landlord will be required to pay the Tenants \$2,587.56, representing three month's rent compensation, no later than June 10, 2023.

Daily Compensation and Rent Deposit

15. Based on the monthly rent of \$862.52, the daily compensation is \$28.36. This amount is calculated as follows: $\$862.52 \times 12$, divided by 365 days.
16. The Tenants were required to pay the Landlord \$7,799.00 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to May 2, 2023.
17. Since the termination date in the notice of termination, the Tenants paid the Landlord \$8,625.20 in rent.
18. The Landlord collected a rent deposit of \$850.51 from the Tenants and this deposit is still being held by the Landlord. Interest on the rent deposit, in the amount of \$36.77 is owing

to the Tenants for the period from February 1, 2021, the date the current Landlord assumed ownership of the property, to May 2, 2023.

19. In accordance with s. 106(10) of the Act, the last month's rent deposit shall be applied to the rent for the last month of the tenancy.

Relief from Eviction

20. 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 be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.
21. The Landlord's representative stated that the Tenants had many possessions stored in the unit, and this is the reason, she speculated, that the Tenants did not want to vacate the rental unit.
22. The Landlord's representative submitted that she was not aware of any circumstances that should be considered in a determination of whether to provide the Tenants with eviction relief, nor were the Tenants or their representative present at the hearing to provide submissions with respect to the Tenants' relief from eviction. I am also satisfied that, as provided in the March 22, 2023 letter from the Landlord to the Tenants, that the Landlord has repeatedly tried to compensate the Tenants beyond the requirements of the Act, as well as offered relocation assistance to the Tenants; however, all of these efforts have been rebuffed by the Tenants. For these reasons, it would be unfair to the Landlord to grant the Tenants with eviction relief.

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 June 15, 2023.
2. On or before June 10, 2023 the Landlord shall pay to the Tenants \$2,587.56, representing three months rent compensation, failing which this order shall be void and of no further force or effect. The Landlord will have complied with this paragraph by providing the Tenants with a cheque or an e-transfer payment of \$2,587.56 on or before June 10, 2023.
3. If the unit is not vacated on or before June 15, 2023, then starting June 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 June 16, 2023.
5. As of the date of this hearing, the amount of the rent deposit and interest the Landlord owes on the rent deposit exceeds the amount the Landlord is entitled to by \$1,713.58. This amount represents the rent of \$826.20 paid by the Tenants for the period of May 3 to 31,

2023, as well as the \$887.38 owed to the Tenants for their rent deposit and interest on that deposit.

6. However, the Landlord is authorized to deduct from the \$1,713.58 owing to the Tenants, \$28.36 per day for compensation for the use of the unit starting May 3, 2023 to the date the Tenants move out of the unit.
7. The Landlord or the Tenants shall pay to the other any sum of money that is owed as a result of this order.

May 23, 2023

Date Issued

15 Grosvenor Street, Ground Floor,
Toronto ON M7A 2G6

Frank Ebner

Member, Landlord and Tenant Board

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 December 16, 2023 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.