



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

Citation: 1777705 Ontario Inc. v Norman Somerville, 2023 ONLTB 36606

Date: 2023-05-18

File Number: LTB-L-038992-22

In the matter of: 542 MCGREGOR SIDE RD
SARNIA ON N7T7H5

Between: 1777705 Ontario Inc. Landlords
629260 Ontario Ltd.

And

Norman Somerville Tenants
Susan Clark

1777705 Ontario Inc. and 629260 Ontario Ltd. (the 'Landlords') applied for an order to terminate the tenancy and evict Norman Somerville and Susan Clark (the 'Tenants') because the Landlords require possession of the rental unit in order to demolish the unit. The Landlords 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 Landlords' agent, Charlie Webb, and the Landlords' representative, Peter Norris, attended the hearing. As of 9:54 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 Landlords' evidence.

Determinations:

1. As explained below, the Landlords have 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 Landlords and the Tenants is terminated, and the Tenants must move out of the rental unit on or before May 31, 2023.
2. The Tenants were in possession of the rental unit on the date the application was filed, and the Tenants' unit is the only unit in a single detached residential complex.

N13 Notice of Termination

3. On March 3, 2022, the Landlords served the Tenants an N13 Notice of Termination (N13) with the termination date of July 31, 2022. The Landlords claim 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 Landlords' representative submitted that the Landlords did not serve any other N13s, for this tenancy or any other tenancy, in the previous two years.
6. The representative submitted further that the Landlords applied to the City of Sarnia for a demolition permit on August 29, 2022; however, the city will not sign and issue the completed permit until the utilities are disconnected, and the utilities can not be disconnected until the Tenants have vacated the unit. The Landlords submitted their City of Sarnia Application for a Permit to Construct or Demolish, dated August 29, 2022, with only one signature on the permit clearance form from the Sarnia Fire Department, dated August 29, 2022.
7. The representative stated that the Landlords intend to use the vacant land from the demolished residential complex for a parking lot to service a commercial property that the Landlords own adjacent to the residential complex property.
8. On the basis of the Landlords' uncontested evidence, I am satisfied that the Landlords have taken all reasonable steps to obtain and complete the necessary demolition permit, and that the Landlords in good faith intend to demolish the rental unit and the residential complex. Accordingly, the Landlords require the rental unit and the residential complex to be vacant.

Compensation

9. I am satisfied that 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.
10. Accordingly, s. 52(2) of the Act requires a landlord to compensate a tenant in an amount equal to one 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(2) of the Act.

11. The Landlords' agent testified that on July 1, 2022 a cheque in the amount of \$600.00, representing one month's rent compensation, was personally delivered to the Tenants; however, the Tenants would not accept the cheque on July 1, 2022, nor did the Tenants accept the cheque during four additional attempts to compensate the Tenants in July and August 2022. The Landlords' agent asserted that the Tenants did not want to talk about any form of compensation. The agent acknowledged that the Landlords did not offer to waive the Tenants' rent for one month to satisfy the compensation requirement.
12. 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.
13. On the basis of the evidence provided, I find that the Landlords met their obligation to pay the Tenants compensation equal to one month's rent in accordance with s. 52(2) and s. 55.1 of the Act, by providing the Tenants with a cheque for \$600.00, representing one month's rent, on July 1, 2022 – before the termination date of July 31, 2022.
14. The Tenants' failure on five separate occasions to accept the cheque payment as compensation, does not invalidate the Landlords' 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.
15. 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 Landlords to compensate the Tenants.
16. If the tenancy is terminated, the Landlords will be required to pay the Tenants \$600.00, representing one month's rent compensation, no later than May 26, 2023.

Daily Compensation and Rent Deposit

17. Based on the monthly rent of \$600.00, the daily compensation is \$19.73. This amount is calculated as follows: \$600.00 x 12, divided by 365 days.
18. The Tenants were required to pay the Landlords \$5,425.75 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to May 2, 2023.
19. Since the termination date in the notice of termination, the Tenants have not provided any rent payments to the Landlords.
20. There is no last month's rent deposit for this tenancy.

Relief from Eviction

21. 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.
22. The Landlords' agent and representative were 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 any attempts by the Landlords to coordinate with the Tenants regarding the Landlords' L2 application, have been rebuffed by the Tenants. For these reasons, it would be unfair to the Landlords to grant the Tenants with eviction relief.

It is ordered that:

1. The tenancy between the Landlords and the Tenants is terminated. The Tenants must move out of the rental unit on or before May 31, 2023.
2. On or before May 26, 2023 the Landlords shall pay to the Tenants \$600.00, representing one month's rent compensation, failing which this order shall be void and of no further force or effect. The Landlords will have complied with this paragraph by providing the Tenants with a cheque or an e-transfer payment of \$600.00 on or before May 26, 2023.
3. If the unit is not vacated on or before May 31, 2023, then starting June 1, 2023, the Landlords 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 Landlords on or after June 1, 2023.
5. The Tenants shall pay to the Landlords \$5,425.75, which represents compensation for the use of the unit from August 1, 2022 to May 2, 2023.
6. The Tenants shall also pay to the Landlords compensation of \$19.73 per day for the use of the unit starting May 3, 2023 until the date the Tenants move out of the unit.
7. If the Tenants do not pay the Landlords the full amount owing on or before May 31, 2023, the Tenants will start to owe interest. This will be simple interest calculated from June 1, 2023 at 6.00% annually on the balance outstanding

May 18, 2023

Date Issued

Frank Ebner
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 December 1, 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.