



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

**Citation:** McLeod v Desjarlais, 2023 ONLTB 29186

**Date:** 2023-04-05

**File Number:** LTB-L-046876-22

**In the matter of:** 3-837 McIntyre Street East North  
Bay, ON P1B 1G2

**Between:** Darlene Mcleod Landlord

**And**

Denis Wapachee Desjarlais Tenant

Darlene Mcleod (the 'Landlord') applied for an order to terminate the tenancy and evict Denis Wapachee Desjarlais (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 March 1, 2023.

Only the Landlord and the Landlord's Legal Representative Jennifer Demelweek attended the hearing.

As of 1:42 pm, 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. 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 is terminated.
2. The Tenant was in possession of the rental unit on the date the application was filed.

3. On July 11, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of November 30, 2022 deemed served that same date. The Landlord claims vacant possession of the rental unit is required for demolition.
4. The Landlord testified that on June 9, 2022 an inspection had taken place of the residential complex by Carly Price, a building inspector with the City of North Bay. As a result of the inspection, on June 30, 2022, Inspector Price issued an Order to Comply pursuant to ss. 12(2) and 10 of the *Building Code Act, 1992* ordering the Landlord to decommission two

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dwelling units in the residential complex in order to render use of the residential complex as a single-family dwelling.

5. The order outlined that the Landlord was to be in compliance with the order by July 18, 2022. The Landlord testified that she has owned the residential complex 25 years and was never aware that using the residential complex as a triplex was illegal.
6. Since that date, the Landlord has undertaken work in the residential complex, namely having fixed the upstairs and main floors. The Landlord entered into evidence various building permits she has received in order to complete the work which includes replacing the kitchen and removing water lines.

### *Analysis & Findings*

7. Section 50(1) of the *Residential Tenancies Act, 2006* (the 'Act') states:

*50(1) A landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to,*

- 1. Demolish it;*
  - 2. Convert it to use for a purpose other than residential purposes;*
  - 3. Do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.*
8. The Landlord intends on converting the entirety of the residential complex from a triplex to a single-family dwelling as ordered by the City. The Canadian Oxford Dictionary defines demolish as "pull down, completely destroy or break", I find that in this circumstance the Landlord intends to completely destroy the very use of the building from a triplex to a single-family dwelling.
  9. In accordance with decision TSL-86609-17 issued by then Member, now Vice Chair Lang, "demolition" occurs in a situation where the rental unit is gone and that it is not possible for

the tenant to exercise their right to first refusal, as they would be able to in accordance with a notice issued under s. 50(1)(c) of the Act.

10. As such, based on the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Landlord requires the rental unit to be vacated because the Landlord in good faith intends to demolish it. I am also satisfied that the Landlord has obtained the necessary permits for this work.
11. Further, because the residential complex contains fewer than five residential units and the demolition was ordered to be carried out under the authority of any other Act, the Landlord was not 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.

### *Daily Compensation*

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12. The Tenant was required to pay the Landlord \$1,795.07 in daily compensation for use and occupation of the rental unit for the period from December 1, 2022 to March 1, 2023.
13. Based on the Monthly rent, the daily compensation is \$19.73. This amount is calculated as follows: \$600.00 x 12, divided by 365 days.
14. There is no last month's rent deposit.

### *Section 83 Considerations*

15. 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.

### **It is ordered that:**

16. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 16, 2023.
17. If the unit is not vacated on or before April 16, 2023, then starting April 17, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
18. 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 April 17, 2023.
19. The Tenant shall pay to the Landlord \$1,795.07, which represents compensation for the use of the unit from December 1, 2022 to March 1, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.

20. The Tenant shall also pay the Landlord compensation of \$19.73 per day for the use of the unit starting March 2, 2023 until the date the Tenant moves out of the unit.

**April 5, 2023**

**Date Issued**

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**Jagger Benham**

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 October 17, 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.

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