



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

Citation: 1766 University Holdings v Smedley, 2023 ONLTB 26068

Date: 2023-03-17

File Number: LTB-L-023909-22

In the matter of: 4-1766 University Avenue West
Windsor, ON N9B 1C4

Between: 1766 University Holdings Landlord

And

Nellie Smedley Tenant

1766 University Holdings (the 'Landlord') applied for an order to terminate the tenancy and evict Nellie Smedley (the 'Tenant') because the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to 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 February 23, 2023.

Only the Landlord's agent Martine Dennis and the Landlord's Legal Representative Kira Passell attended the hearing.

As of 9:38 am, 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 March 31, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of July 31, 2022 deemed served that same date. The Landlord claims vacant possession of the rental unit is required for extensive repairs.
4. The Landlord's Legal Representative submitted into evidence various invoices and work plans from various contractors that outlined the work to be completed at the residential complex including demolishing the bathrooms to the studs, demolishing the kitchens, removing all of the floors, reframing the exterior walls, framing new ceilings, installing new drywall, updating the lighting, updating the plumbing, updating the faucets and showerheads, updating the electric heaters, adding another hot water tank, replacing doors and windows, and installing new insulation.
5. As a result of the work being conducted, all of the residential complex's vital services had been disconnected other than in the Tenant's unit. The Tenant is the last remaining tenant in the residential complex.
6. On the basis of the Landlord's uncontested evidence, I am satisfied on a balance of probabilities that the Landlord in good faith intends to do repairs or renovations that are so extensive that they require a building permit and vacant possession of the rental unit.
7. Further, I am satisfied that the Landlord has obtained the necessary permits for this work.

Compensation and Right to First Refusal

8. The Tenant has the right to move back into the rental unit when the repairs or renovations are completed at a rent that is no more than what the Landlord could have lawfully charged if there had been no interruption in the tenancy. The Tenant must give the Landlord notice in writing of the Tenant's intent to move back into the unit before vacating the rental unit. The Tenant must inform the Landlord in writing of any change in address.
9. The Landlord is required to compensate the Tenant an amount equal to three months rent or offer the tenant another rental unit acceptable to the Tenant, because:
 - o the Tenant has not given the Landlord a written notice that the Tenant intends to occupy the rental unit when the repairs or renovations are completed;
 - o the residential complex contains at least five residential units, and;
 - o the repair or renovation was not ordered to be carried out under the authority of this or any other Act.
10. The Landlord paid the Tenant the required compensation prior to the termination date of March 31, 2022.

Daily Compensation

11. The Tenant was required to pay the Landlord \$5,988.82 in daily compensation for use and occupation of the rental unit for the period from August 1, 2022 to February 23, 2023.

12. Based on the Monthly rent, the daily compensation is \$28.93. This amount is calculated as follows: \$880.00 x 12, divided by 365 days.
13. There is no last month's rent deposit.

Section 83 Considerations

14. The Landlord's Legal Representative submitted that the Tenant is currently in arrears of rent and had attended a hearing in November with respect to an N4 notice of termination.
15. The Landlord's Legal Representative submitted that the Landlord has tried to work with the Tenant to find a new unit including offering assistance with moving expenses, but the Tenant refuses to vacate. As outlined above, the Tenant is the remaining tenant in the residential complex and the Landlord's Legal Representative submits that the Landlord is prejudiced by the Tenant continuing to reside in the unit, as it has interfered with the renovations.
16. 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:

17. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before March 28, 2023.
18. If the unit is not vacated on or before March 28, 2023, then starting March 29, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
19. 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 March 29, 2023.
20. The Tenant shall pay to the Landlord \$5,988.82, which represents compensation for the use of the unit from August 1, 2022 to February 23, 2023, less the rent deposit and interest the Landlord owes on the rent deposit.
21. The Tenant shall also pay the Landlord compensation of \$28.93 per day for the use of the unit starting February 24, 2023 until the date the Tenant moves out of the unit.

March 17, 2023

Date Issued

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 September 29, 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.