



**Order under Section 69 and Section 79  
Residential Tenancies Act, 2006**

**Citation:** Freitas v Mattie, 2023 ONLTB 22567

**Date:** 2023-02-24

**File Number:** LTB-L-010970-22

**In the matter of:** B1-BASEMENT, 1382 WESTON RD  
YORK ON M6M4R8

**Between:** George Freitas Landlord

**And**

Lorene Mattie Tenant

George Freitas (the 'Landlord') applied for an order to terminate the tenancy and evict Lorene Mattie (the 'Tenant') because:

- The Landlord intends to do repairs or renovations so extensive that the Landlord is required to get a building permit and the rental unit must be vacant to do the work; and
- the Landlord believes that the Tenant abandoned 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 January 9, 2023.

The Landlord attended the hearing and was represented by Fred Bari.

As of 10:44 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. As a result, the hearing proceeded with only the Landlord's evidence.

**Determinations:**

1. The rental unit is a basement unit of a detached house consisting of three separate residential units.
2. For reasons that follow, the application is granted.

**PRELIMINARY ISSUES**

3. At the end of the hearing I ordered the Landlord to send to the Board, no later than January 13, 2023, the following documents as a post-hearing submission: (i) evidence that compensation was paid to the Tenant; and, (ii) any and all documentation, including orders, pertaining to the subject matter of the application. Documentation was received by the Board on January 11, 2023 and was considered in the reasons that follow.

## THE L2 APPLICATION

N13 Notice - Renovations and repair

4. The Landlord testified that on December 7, 2021 the residential complex was damaged by a fire that occurred in the upper floors of the residential complex. After speaking with the Fire Marshall on site that day, he was informed that due to the extent of fire and water damage sustained by the residential complex (and the risk of smoke inhalation) that occupants were no longer permitted into the complex. The Landlord also testified that on or about December 23, 2021 an Inspector from the City of Toronto attended the complex and declared it, and rental unit, “condemned”.
5. Submitted to the Board as a post-hearing submission was an ‘Order to Remedy Unsafe Building’ issued by Alex Colas, Inspector Specialist from the City of Toronto on December 23, 2021, which indicated, among other things, the following:

“You are hereby ordered to:

1. **Immediately, take measures to reasonably prevent access to the building. The building must remain secured from unauthorized entry. The site must be left in a safer and secure manner at all times.**
2. Immediately retain the services of a professional engineer to assess the structural stability of the building and prescribe all remedial action(s) required to eliminate any unsafe conditions. You shall submit to Toronto Building a copy of the professional Engineers report by December 28, 2021.
3. Any and all remedial measures outlined in said report(s) are to be carried out under the supervision of the engineer.
4. You are required by January 10, 2021 to provide a report prepared by the professional engineer attesting to the completion of all prescribed remedial actions to the satisfaction of the professional engineer...
5. **All work subsequent to the work noted above will require a permit. Further work shall not commence until the permits are issued.** [Emphasis added]
6. In response to questions posed by the Board, the Landlord confirmed that he began the process of obtaining building permits in January 2022, however due to technical discrepancies pertaining to materials, he was required to file an application with the City of Toronto Committee of Adjustments, which is where this process remained at the time of the hearing.
7. On December 29, 2021, the Landlord issued to the Tenant a *Notice to End your Tenancy Because the Landlord Wants to Demolish the Rental Unit, Repair it or Convert it to Another Use N13* (the ‘N13 Notice’) by leaving a copy in the mailbox. The date of termination on the notice was April 30, 2022. The Landlord confirmed that at the time the notice was served onto the Tenant the tenancy was month-to-month.
8. The N13 Notice, which was entered into evidence, described the work planned as follows:

“Repair all Fire Damage to apartment units, fire incident on December 7<sup>th</sup>, 2021

Huge fire at the property, on or about December 7, 2021, everyone moved out, basement tenants also moved out but she kept her belongings, she is not taking her stuffs out of the basement, due to fire, my insurance company is waiting for re-building.

Fire Report # F21130126

Police Report # 2021-2347757

City of Toronto Remedy unsafe Buildings #21 251247 UNS 00 V1”

9. The Landlord testified that since the date of the fire, he made numerous attempts to contact the Tenant by telephone and text message, none of which were returned. The Landlord explained that the Tenant was present at the time the fire began and left the unit that day, returning back within 2-3 days to retrieve some of her personal belongings, while also leaving other personal items the Landlord describes as ‘junk’, which remains in the unit as of the date of the hearing.
10. In response to questions posed by the Board, the Landlord testified that he last saw the Tenant approximately 4-5 months earlier when she attended the unit to retrieve her mail, at which time he attempted to update her on the repairs however, explained that she ‘just walked away’ without communicating with him.
11. The Landlord explained that, in his view, the Tenant had abandoned the unit as he had not seen her at the unit of late, however, indicated that he placed a padlock on the doors to keep people out (as per the directions of the Fire Marshall and municipality) later learning that it had been broken, allowing entry into the unit. The Tenant does not have a key to the padlock or the unit, nor has she paid rent since vacating on the day of the fire (December 7, 2021).
12. The Landlord testified that the Tenant did not provide the Landlord with a written request expressing an interest to move into the unit after the repairs were completed, nor what her current address was.
13. The Landlord also confirmed that he paid the Tenant compensation of one month’s rent in accordance with the N13 Notice on December 15, 2021 by cheque. Submitted as a post-hearing submission was an image of a cheque written out in the name of the Tenant, dated December 15, 2021 and identified as cheque number ‘010’, with the word ‘compensation’ written in the ‘Memo’ section.

### Analysis

14. Subsection 50(1)(c) of the *Residential Tenancies Act, 2006* (the ‘Act’) provides that a landlord may give notice of termination of a tenancy if the landlord requires possession of the rental unit in order to do repairs or renovations to it that are so extensive that they require a building permit and vacant possession of the rental unit.
15. Subsection 50(2) of the Act provides that the date of termination specified in the notice shall be at least 120 days after the notice is given and shall be the day a period of the tenancy ends or, where the tenancy is for a fixed term, the end of the term.
16. Based on the uncontested evidence presented at the hearing, I am satisfied that service of the N13 Notice issued by the Landlord is valid. It was served onto the Tenant by an

accepted method of service under the Act and the Board's Rules, and the termination date was at least 120 days after the N13 Notice was given to the Tenant.

17. Pursuant to subsection 50(1) of the Act the Landlord has the burden of proving on a balance of probabilities (i.e., that it is more likely than not) that the following facts are true:
  - (i) Repairs or renovations need to be completed that are so extensive that a building permit is required to do the work at issue; and,
  - (ii) vacant possession is required to do the work;
18. Based on the uncontested evidence at the hearing, I am satisfied on a balance of probabilities that the repairs and renovations that need to be performed are so extensive that building permit is required to complete the remaining work, and that the Landlord requires vacant possession of the rental unit to complete the repairs.
19. The Landlord submitted into evidence an 'Order to Remedy Unsafe Building' issued by Alex Colas, Inspector Generalist of the City of Toronto which orders the Landlord to "prevent access to the building" and to obtain the required permits which, the Landlord testified he complied with by communicating with the Tenant that she needed to find a new place to live and attached a padlock to the unit to secure it, and, in January 2022, applied for the required permit (which was recently before the City of Toronto Committee of Adjustments).
20. Based on the forgoing, I find that the Landlord had met the requirements under subsection 50(1) of the Act as the repairs at issue required a building permit (and the Landlord has taken the necessary steps to obtain the necessary permits) and the Landlord required vacant possession of the rental unit to perform the repairs.

#### Abandoned the unit

21. The Landlord asks the Board to determine that the Tenant has abandoned the rental unit and issue an order terminating the tenancy on that basis. As I have already made a determination that the tenancy is terminated in accordance with the N13 Notice, there is no reason to undertake an analysis on whether the Tenant abandoned the unit, which I will decline to do.

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

1. The tenancy between the Landlord and the Tenant is terminated as of April 30, 2022, the date of termination identified on the N13 notice.
2. If the unit is not vacated on or before March 21, 2023, then starting March 22, 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 March 23, 2023.

**March 10, 2023, 2023**  
**Date Issued**

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Emile Ramlochan  
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.