



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

Citation: 1795503 Ontario Limited v Spagnuolo, 2023 ONLTB 19478

Date: 2023-02-16

File Number: LTB-L-011648-22

In the matter of: 677 DOVERCOURT RD
TORONTO ON M6H2W7

Between: 1795503 Ontario Limited Landlord

And

Caroline Spagnuolo Tenant

1795503 Ontario Limited (the 'Landlord') applied for an order to terminate the tenancy and evict Caroline Spagnuolo (the 'Tenant') because:

- the Landlord requires possession of the rental unit in order to demolish the unit.

This application was heard by videoconference on January 9, 2023.

The Landlord's legal representative, Ilan Shingait, and the Landlord, attended the hearing.

The Tenant's legal representative, Trevor Sands, and the Tenant, attended the hearing.

Determinations:

1. On September 8, 2021, the Landlord gave the Tenant an N13 notice of termination with the termination date of January 31, 2022. The Landlord claims vacant possession of the rental unit is required because the Landlord wants to demolish the rental unit, repair it or convert it to another use ('N13 notice').

2. The Landlord's N13 notice indicates that the reason for the notice is the Landlord requires the rental unit to be vacated because the Landlord in good faith intends to demolish the existing rental unit and replace it with two, single dwelling rental units.
3. I am satisfied that the Landlord has obtained the necessary permits for this work and I am satisfied that the Landlord has taken all reasonable steps to obtain the necessary permits for this work. I am satisfied that the rental unit must be vacant for the Landlord to perform the necessary work to demolish the rental unit from a single two bedroom unit and rebuild, in its place, two one bedroom rental units.
4. 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. Therefore, the Landlord is 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.

PRELIMINARY ISSUE: COMPENSATION NOT PAID

5. The Tenant disputed the Landlord had met his obligation with respect to compensating her for one month's rent. The Tenant did not provide any evidence to the Board to support her claim, but testified on a day she visited her bank, the bank teller had told her the rent cheque for January 2022 had been cashed.
6. The Landlord's position is that he had a conversation with the Tenant, by phone, a week before Christmas and informed her of his intent to waive the lawful rent for the month of January 2022 as compensation for the N12 notice required by the Act. The Landlord stated that it was usual practice for him to contact the Tenant and for them to make arrangements for the Tenant to provide post dated cheques for the upcoming year.

The Law and Analysis

7. Section 55 of the Act states:

Compensation under ss. 48.1, 49.1, 52, 54 or 55

55.1 If the landlord is required to compensate a tenant under section 48.1, 49.1, 52, 54 or 55, the landlord shall compensate the tenant no later than on the termination date specified in the notice of termination of the tenancy given by the landlord under section 48, 49 or 50.

8. The Landlord testified he compensated the Tenant by waiving the January 2022 rent and supported his claim with an evidence submission of the rent roll that indicates he compensated the Tenant by waiving the January 2022 rent.
9. The Landlord also supported his claim with oral testimony providing details of a phone call conversation the Landlord had with the Tenant a week before Christmas in December 2021. The Landlord testified that the Landlord and the Tenant had established a pattern over the years of having a conversation around mid December of each year to in order to make arrangements for the Tenant to provide post dated cheques for the upcoming year.
10. In my questioning to the Tenant's legal representative regarding the rent roll submitted by the Landlord, the Tenant's legal representative stated that he reviewed the rent roll and the records match with respect to rent paid and rent owed. The Tenant's legal representative acknowledged that the ledger balanced with the Landlord's submissions that the Landlord had compensated the Tenant by waiving one month rent but stated he could not confirm what month.
11. The Tenant failed to submit any evidence in the form of bank records, or receipts with respect to her claim that her January 2022 rent cheque was cashed, relying solely on her oral testimony that a bank teller told her the January cheque the Tenant wrote was cashed. The Tenant did not produce the bank teller as a witness at the hearing to support her claim and as such the Tenant's submission with respect to the bank teller's statement is considered hearsay. While the Statutory Powers Procedure Act, 1990 permits administrative tribunals to allow hearsay evidence, in *Manikam v. Toronto Community Housing Corporation*, 2019 ONSC 2083 the Divisional Court found that tribunals must first assess whether the hearsay evidence is necessary and reliable. Hearsay evidence is a problem because the opposing party has no opportunity to cross-examine the person making the statement. Hearsay evidence can be admitted and given some weight if it is necessary and reliable. In the absence of the bank teller to appear as a witness for the Tenant to support the Tenant's claim, I give this evidence very little weight.
12. The standard of proof in proceedings before this Board is "proof on a balance of probabilities." By that standard, the party bearing the burden of proof must show with evidence that, "more likely than not", their assertions are true.
13. The onus rests with the Tenant to provide sufficient evidence to support her claim the Landlord cashed her January 2022 rent cheque and did not provide compensation pursuant to section 55 of the Act. I do not find the Tenants evidence persuasive enough, relying solely on her submission she was informed by a bank teller that told her the rent cheque was cashed. The Tenant's lack of particulars and specific details regarding her claim her rent cheque for January 2022 was cashed are such that I am not satisfied the Tenant has met that burden of proof to support her claim.

14. With the evidence before me and on a balance of probabilities, I find the Landlord has met his obligation with respect to compensating the Tenant. I find the Landlord credible with respect to his testimony regarding the phone call in December 2021. The Landlord provided details of the phone call and I am satisfied the Landlord and the Tenant had established a pattern over the years of a regular communication in December each year. I am satisfied the Landlord notified the Tenant he was waiving the January 2022 rent as compensation for the N12 notice and I find the Landlord has met his obligation pursuant to the Act and therefore the Tenant's claim is dismissed.

DEMOLISHING THE RENTAL UNIT

15. At the hearing the Landlord testified he intends to demolish the rental unit. The Landlord testified the single two floor rental unit will be demolished, and in its place two new single units will be built. The unit will undergo major construction and the Landlord intends to replace electrical and some plumbing. The interior of the unit will be completely different and the main entrance to the unit will be closed and a new entrance accessing both units will be built on the opposite side of the building. The unit will also undergo "underpinning" a process by which the old floor supports will be removed and new ones installed. As a result the main floor and basement portion of the unit will be uninhabitable due to the extensive work.
16. The Landlord submitted building permits, designs and contractor quotes for the work to be completed in support of his application.
17. The Tenant did not dispute that the Landlord requires vacant possession for the rental unit due to the extent of work to be completed.

RELIEF FROM EVICTION

18. The Tenant is sixty two (62) years old and is on ODSP as a source of income. The Tenant submitted she suffers from macular degeneration and asthma, but provided no documents to the board with respect to her medical status. The Tenant submitted she navigates through the community as she has been in the area for a long time and is comfortable with the area. Local neighbours help the Tenant navigating and the Tenant also uses a walking stick to help navigate her day to day activities. The Tenant submitted that moving to a new area would be stressful as she would need to learn to live in a new area, and it would take time to be comfortable in a new rental unit.
19. The Tenant has an adult son aged twenty seven that lives in the rental unit with her and contributes to the rent, however the Tenant testified that if they were evicted, her son

would move in with his girlfriend and she would be on her own. The Tenant did not know how much her son earned as income

20. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), including the Tenant's submissions she has medical limitations with her sight, and that the Tenant has been in the unit for many years and is familiar with her surroundings. I weighed the prejudice to the Landlord on a long delay order for eviction against the time the Tenant would require to allow her to find new suitable housing and I find that it would not be unfair to postpone the eviction until April 30, 2023 pursuant to subsection 83(1)(b) of the Act.
21. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.
22. This order contains all reasons for the determinations and order made. No further reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated. The Tenant must move out of the rental unit on or before April 30, 2023.
2. If the unit is not vacated on or before April 30, 2023, then starting May 1, 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 May 1, 2023.

February 16, 2023

Date Issued

Greg Brocanier

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.

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In accordance with section 81 of the Act, the part of this order relating to the eviction of the Tenant expires on October 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.

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