



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

Citation: Estate of Van Leeuwen v Brown, 2023 ONLTB 13814

Date: 2023-01-04

File Number: LTB-L-072636-22
(CEL-00506-21)

In the matter of: 143 Mill Street
Angus ON L0M1B2

Between: Estate of Casey Van Leeuwen Landlords
Courtney Macneil-Wilson
James Klezerbrink

And

Kevin Brown Tenant

Your file has been moved to the Landlord and Tenant Board’s new case management system, the Tribunals Ontario Portal. Your new file number is LTB-L-072636-22.

The Estate of Casey Van Leeuwen, Courtney Macneil-Wilson and James Klezerbrink (the 'Landlords') applied for an order to terminate the tenancy and evict Kevin Brown (the 'Tenant') because:

- the Landlord has entered into an agreement of purchase and sale of the rental unit and the purchasers in good faith require possession of the rental unit for the purpose of residential occupation.

This application was heard by videoconference on December 19, 2022.

The following attended the hearing:

- L. Dubois, Legal Representative for the Estate of Landlord Casey Van Leeuwen,
- the Landlords/Purchasers Courtney Macneil-Wilson and James Klezerbrink,
- their Legal Representative K. Draycott,
- the Tenant, and
- the Tenant’s Legal Representative S. Harvey.

Preliminary Matter: Adjournment Request

1. The Tenant’s Legal Representative requested an adjournment as he was required in another hearing room on a matter that was peremptory on the Tenant. He submitted that there was great prejudice to the Tenant if the adjournment was not granted and that there was minimal prejudice to the Purchaser/Landlords, merely “minor inconvenience” if the adjournment was brief and returned on an expedited basis.

2. The Legal Representatives for the Landlords opposed the request on the basis that there had already been a 16-month delay from the closing of the purchase on August 5, 2021 to the date of the hearing and the Purchasers have still not been able to move into the property. The matter was initially set to be heard on July 22, 2021 and was adjourned to allow the Tenant to issue a summons for a witness. No witness appeared at the current hearing. No advance request to reschedule on consent was made by the Tenant.
3. The hearing from July 22, 2021 was to have been rescheduled on an expedited basis as the Landlord was terminally ill. The Landlord then passed away awaiting the new hearing which necessitated the appearance of the Representative for the Estate at the current hearing.
4. The adjournment was denied for the following reasons. The Board must balance the rights of the parties to ensure that matters are resolved quickly while not adversely affecting their rights to a fair hearing and weighing the prejudice that might be suffered by each party. The Divisional Court, in *Re Flamboro Downs Holdings Ltd. and Teamsters Local 879*, 1979 CanLII 1669 (ON SC), stated that tribunals are entitled to control their own processes and are not obliged to grant adjournments to accommodate the convenience of parties. However, the discretion to grant or deny adjournments must be exercised reasonably, and all relevant factors must be taken into account, including the interests of, and implications to, the parties and the tribunal.
5. The parties agreed that the sole issue to be determined was whether the compensation under s. 49(1) of the Act was paid, which considerably limits the amount of time required for the hearing.
6. The prejudice to the Landlords of a further adjournment is considerable. The Purchaser/Landlords were ready to proceed and are still unable to move into their property 16 months after the purchase.
7. The Tenant was represented throughout the L2 proceedings, and it cannot be attributed to any fault of the Landlords that the Tenant's Representative had a scheduling conflict, was not prepared to proceed, had not requested to reschedule on consent, and had not arranged for an agent to attend in his place. Further, the Tenant joined the 1:00 p.m. hearing at block at 2:15 p.m. Had he been present at the beginning of the hearing block, it might have been possible to address the matter and still provide sufficient time for the Tenant's Representative to address his other matter. The Tenant is still in possession of the property and suffers minimal prejudice.
8. In consideration of the prejudice to the parties and to resolve the matter in a reasonable amount of time, the adjournment request was denied and the hearing proceeded.

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 effective January 15, 2023.

2. The Tenant was in possession of the rental unit on the date the application was filed on May 27, 2021 and was still in possession as of the date of the hearing.
3. On May 6, 2021, the Landlord served the Tenant an N12 notice of termination with the termination date of July 31, 2021. The notice was given on behalf of the Purchasers who claim that they require vacant possession of the rental unit for the purpose of residential occupation.
4. The Tenant's Legal Representative acknowledged that the only issue in dispute on the application is the compensation, arguing that it was not received by the Tenant.

Compensation

5. Section 49.1 of the Act requires a landlord to compensate a tenant in an amount equal to one month's rent if the purchaser, in good faith, requires the rental unit for the purpose of residential occupation. 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, subsection 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 49.1 of the Act.
6. On the basis of the evidence presented, I find that the Landlord offered the Tenant a rent waiver by letter dated May 6, 2021 for the months of both May and June 2021 in order to satisfy the requirement under s. 55(1). The Tenant did not accept this.
7. I also find on the basis of the evidence presented that the Landlord sent an e-transfer on July 14, 2021 equal to one month's rent to the Tenant to pay the required compensation. The Tenant's Representative acknowledged that it was sent to the correct email address. It was not accepted by the Tenant. The Tenant testified that he didn't remember receiving it, but that he was not very "tech-savvy."
8. In my view, it cannot have been the Legislature's intent that a tenant whose landlord wants the unit for residential occupation by a purchaser could unilaterally frustrate the entire process by simply refusing to accept the required compensation.

Relief from eviction

9. The Tenant did not lead any evidence as to why it would be unfair to grant relief from eviction. The N12 Notice was served on the Tenant on May 6, 2021, over 19 months prior to the date of the hearing.
10. Having regard to the circumstances of both parties in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), particularly the length of effective notice that the Tenant has had, coupled with the Landlords' inability to move into the property that they purchased, I find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlords and the Tenant is terminated, as of January 15, 2023. The Tenant must move out of the rental unit on or before January 15, 2023.
2. The Tenant shall pay to the Landlords \$ 14,972.54, which represents compensation for the use of the unit from August 1, 2021 to December 19, 2022.
3. The Tenant shall also pay to the Landlord \$29.59 per day for compensation for the use of the unit starting December 20, 2022 to the date the Tenant moves out of the unit.
4. The foregoing amounts shall be abated by any amounts already paid to rent for the rental periods from August 1, 2021 onward, the rent deposit of \$900.00, and any interest thereon.
5. If the Tenant does not pay the Landlords the full amount owing on or before January 15, 2023, then the Tenant will start to owe interest. This will be simple interest calculated from January 16, 2023 at 5.00% annually on the balance outstanding.
6. If the unit is not vacated on or before January 15, 2023, then starting January 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
7. 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 January 16, 2023.

January 4, 2023
Date Issued

Margo den Haan
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 July 16, 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.

