



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

Citation: Executive Properties v Brignall, 2022 ONLTB 14549

Date: 2022-12-21

File Number: LTB-L-004347-22

In the matter of: 3, 257 John Street S
Hamilton ON L8N2C9

Between: Executive Properties Landlord

And

Doug Brignall Tenant

Executive Properties (the 'Landlord') applied for an order to terminate the tenancy and evict Doug Brignall (the 'Tenant') because:

- the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to the unit.

This application was heard by videoconference on August 22, 2022 at 1:52 p.m.

The Landlord's representative Andrew Choubeta, licensed paralegal and the Tenant Doug Brignall attended the hearing.

Determinations:

1. As explained below, the Landlord has proven on a balance of probabilities that the Landlord in good faith intends to do repairs and renovations that are so extensive that they require a building permit and vacant possession of the rental unit.
2. The Tenant was in possession of the rental unit on the date the application was filed.

N13 Notice of Termination

3. On January 24, 2022, the Landlord gave the Tenant an N13 notice of termination with the termination date of May 31, 2022. The Landlord claims vacant possession of the rental unit is required to make extensive repairs.

Landlord's Evidence

4. The Landlord testified the nature of the renovations were major and include installing a new energy efficient air conditioning and HVAC system, new plumbing and interior work some the purpose of waterproofing. This testimony was supported by the detailed

plumbing design drawing, architectural design drawing and HVAC design drawings entered as evidence as well as a detailed renovation summary submitted as evidence as Schedule 1 that specified the work will require 6-8 months, require heat, hydro and water to be turned off, walls to be removed and replaced, subflooring to be removed and replaced rendering the unit uninhabitable during construction.

5. The Landlord submitted a copy of a signed building permit #101725 00 R9 issued April 7, 2022 from the City of Hamilton into evidence. The renovations and designs listed on the building permit was consistent with the testimony provided.
6. The Landlord's representative submitted the notice was given in good faith as the purpose of the renovation is to bring the unit up to code. This was consistent with the language within the signed building permit.

Tenant's Evidence

7. The Tenant testified that the Landlord was not being honest and submitted the Landlord was exaggerating the need for renovations.
8. The Tenant testified that he disputed the need for the building to be renovated claiming many of these repairs were simply nice to have and not needed except for the foundation which the Tenant submitted could be repaired without required him to vacate the unit. The Tenant provided an example testifying the HVAC system is not something he wants and the quality of the unit, while not luxurious, is what he wants.
9. The Tenant further testified that in the past the roof, the walkway, the bathroom and the carpeting has been repaired and repainting has occurred and each time he has simply accommodated the repairs while remaining in the unit and submitted that these renovations are no different than previous situations.

Analysis

10. The valid N13 notice served pursuant to subsection 50(1)(c) allows landlords to give a notice of termination if the landlords require 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".
11. In making its determinations under section 50, the Board must also consider the good faith intent of the applicants. Under subsection 73(1)(a) of the Act, the Board cannot terminate a tenancy and evict the tenant "unless it is satisfied that the landlord intends in good faith to carry out the activity on which the notice of termination is based".
12. Based on the evidence before me, I am convinced that it is more likely than not the Landlord in good faith intends to do repairs and renovations and requires the unit to be vacated for these repairs. The nature of the repairs is extensive as supported by detailed evidence and designs. The fact that the Tenant believes that the Landlord does not need to complete all of the work does not mean that the Landlord does not have a genuine intention to do the work.

13. Building permits in Ontario are required specifically for: plumbing; building or moving walls; installing new exterior doors where there are none; mechanical HVAC duct work; and foundation repairs. Permits must be applied for and approved in order to construct and use/rent secondary or accessory dwellings within a house, in order to ensure these units comply with building and fire safety codes.
14. I find based on the all the evidence before me, the Landlord has obtained all the necessary permits to undertake the work.
15. 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.

Compensation

16. Pursuant to s.54 of the Act, the Landlord is required to compensate the Tenant in an amount equal to the rent for 3 months or offer the Tenant another rental unit acceptable to the Tenant, because:
 - 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;
 - the residential complex contains less than five residential units, and;
 - the repair or renovation was not ordered to be carried out under the authority of this or any other Act.
17. The Landlord issued the Tenant the required compensation, equal to three month's rent \$1,680.00 on January 24, 2022 via certified cheque. The Landlord submitted that as of the date of the hearing, the cheque has yet to be cashed. The Landlord's representative further testified that should the Tenant require a fresh cheque, the Landlord would provide it immediately upon request.
18. The Tenant testified that he had not received a cheque to date; however, acknowledged the cheque may have gotten lost.
19. I am satisfied that compensation was provided by the Landlord even though the cheque has not been cashed. If the
20. There is \$560.00 on deposit.

Relief from Eviction

21. 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 not be unfair to postpone the eviction until March 1, 2023 pursuant to subsection 83(1)(b) of the Act.

22. The Tenant testified that he has lived in the unit for approximately 20 years, earns an income of \$733.00 per month and has a cat and that due to these factors would require additional time to find an appropriate unit.
23. The Landlord's representative acknowledged the current rental market in Hamilton was competitive, was aware of the Tenant's limited income, and further testified the Landlord was sympathetic of the Tenant's circumstances.
24. I accept that the Tenant may experience some challenges related to finding an appropriate and affordable unit. Therefore, I find some delay of eviction would be reasonable. A delay may give the Tenant the opportunity to find stable suitable alternative housing.

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 March 1, 2023.
2. If the unit is not vacated on or before March 1, 2023, then starting March 2, 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 2, 2023.
4. The Landlord shall reissue a cheque to the Tenant in the amount of \$1,698.00, equivalent of 3 months of the current lawful monthly rent (\$566.00 x 3), on or before January 2, 2023.

December 21, 2022
Date Issued

 Greg Witt
 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 2, 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.

