



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

**Citation:** Mostafa v Hoddenbagh, 2022 ONLTB 10114

**Date:** 2022-11-09

**File Number:** LTB-L-028906-22

**In the matter of:** Basement, 9 OSHAWA BLVD N  
OSHAWA ON L1G5R8

**Between:** Golam Mostafa Landlords  
Nadia Mostafa  
Kamruz Zaman

**And**

Nathan Hoddenbagh Tenant

Golam Mostafa, Nadia Mostafa, and Kamruz Zaman (the 'Landlords') applied for an order to terminate the tenancy and evict Nathan Hoddenbagh (the 'Tenant') because the Landlords require vacant possession of the rental unit in order to do major repairs or renovations to the unit. The Landlords also claimed compensation for each day the Tenant remained in the unit after the termination date.

This application was heard by videoconference on October 17, 2022. One Landlord, Golam Mostafa, and the Landlords' representative, Christina Nastas, attended the hearing. The Tenant also attended the hearing.

**Determinations:**

1. As explained below, the Landlords have proven on a balance of probabilities the grounds for termination of the tenancy. Therefore, the tenancy is terminated and the Tenant must move out of the rental unit on or before January 15, 2023.
2. On April 26, 2022 the Landlords served the Tenant with an N13 Notice of Termination (N13) with a termination date of September 30, 2022. The N13 seeks termination of the tenancy on the ground that the Landlords intend to do major repairs or renovations to the rental unit.
3. The Landlords applied to the Board to terminate this tenancy on May 24, 2022. The Landlord testified that he has not, within two years prior to filing this application, given another notice under section 48, 49 or 50 of the *Residential Tenancies Act, 2006* (the 'Act') in respect to the same or a different rental unit.
4. The Landlord testified further that this is a month-to-month tenancy with a monthly rent of \$1416.80 paid on the 1<sup>st</sup> day of each month. The Landlord noted that the Tenant remains in possession of the rental unit and has no rent arrears as of the date of this hearing. The Landlord stated that the Tenant's rental unit is the basement unit of a two-unit residential complex. The Landlord confirmed that he never collected a rent deposit for this tenancy.

## Compensation

5. Section 54(3) of the Act requires a landlord in residential complexes with fewer than 5 units to compensate a tenant in an amount equal to one month's rent if the landlord seeks to terminate the tenancy for the purpose of repair or renovation of the rental unit, and if the tenant has not given written notice to the landlord of the tenant's intent to reoccupy the unit when the repairs are complete. 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 54 of the Act.
6. The Landlord testified that a cheque for \$1416.80, representing one month's rent compensation, was delivered to the Tenant on September 12, 2022 via Canada Post. The Landlord asserted that the cheque was cashed on September 12, 2022. The Tenant testified that he received the cheque and cashed it.
7. The Landlord testified further that as of the day of the hearing, the Tenant has not advised the Landlords, or provided written notice, that the Tenant would like to return to the unit if evicted. The Tenant testified that he would like to move back into the unit if he is temporarily evicted. I am satisfied that as of the day of the hearing, the Tenant has not provided the Landlords with written notice of his intent to re-occupy the unit, pursuant to s. 53(2) of the Act.
8. Accordingly, I find that the Landlords met their obligation to pay the Tenant compensation equal to one month's rent in accordance with sections 54(3) and 55.1 of the Act.

## Good Faith and Building Permits

9. The N13 was served pursuant to section 50(1) of the Act, and any order terminating a tenancy must be in accordance with section 73 of the Act. Section 73 requires that, in order to be successful in this application, the Landlord must establish that at the time of the service of the N13 Notice, the Landlord required in good faith to do major repairs or renovations to the rental unit.

## Landlord's Evidence

10. The Landlord testified that in 2020 a neighbour of the residential complex complained to the City of Oshawa about the Tenant's nighttime activities, and this complaint resulted in the City of Oshawa issuing a letter to the Landlords on July 22, 2020, advising the Landlords that the rental unit needed to be upgraded to a legal dwelling unit because it did not conform with city building, fire and safety codes.
11. The Landlord testified further that as a result of the city's letter, the Landlords took action to upgrade the unit to ensure it complied with city by-laws. The Landlord submitted two work permits to the Board, permit #202000980 issued by the City of Oshawa on November 20, 2020, and revised permit # 202102279 issued by the City of Oshawa on January 11, 2022. The work permits include the installation of an egress window, fire rated walls and ceilings, new plumbing and electrical lines, hard wiring smoke detectors, and two fire rated doors with closers.

12. The Landlord asserted that as a result of the extensive renovations, it would not be safe for the Tenant to reside in the unit during the renovations. The Landlord contended that he would be held liable if the Tenant remained in the unit and was injured during the renovations. The Landlord further noted that the unit has been deemed illegal by the City of Oshawa, and remains unsafe according to the city's building, fire and safety codes for the Tenant's continued residence.
13. The Landlord stated that, as required by the Act, the unit will be available for the Tenant once the renovations are complete if the Tenant wishes to return to the unit.

### **Tenant's Evidence**

14. The Tenant testified that he does not dispute that the renovations in the rental unit are required to comply with municipal safety codes, and that the unit, in its present state is not a legal dwelling unit. However, the Tenant asserted that he is safely able to reside in the rental unit during the period of renovations; he is willing to live with the disruptions; and not all of the required work will result in interference to his use of the unit. The Tenant contended that the Landlords seek to evict him to re-rent the unit at a higher rent once the renovations are completed.
15. The Tenant noted that he has safely lived in the illegal unit for three years, and only now is being asked to vacate the unit for the completion of work.

### **Analysis**

16. On the basis of the evidence provided, I find that the Landlords in good faith genuinely intend to complete extensive renovations to the rental unit to establish the unit as a legal dwelling unit, and these renovations require the vacancy of the unit.
17. I am satisfied that the Landlords are obligated to complete the renovations to establish the unit as a legal rental unit, and that the Landlords have an active building permit for extensive renovations to establish the unit as a legal dwelling unit. The Tenant may elect to re-occupy the unit when the renovations are complete, at the same rent, pursuant to s. 53 of the Act; therefore, I do not accept that the Landlords seek to evict the Tenant, in bad faith, to re-rent the unit to a new tenant at higher rent.
18. On the basis of the evidence provided, I accept that the Tenant is willing to reside in the unit during the renovations; however, I am satisfied that given the extent of the required renovations, it would neither be safe for the Tenant to remain in the unit during the renovations, nor would it be reasonable or effective for the Landlords and contractors to complete the work while the Tenant resides in the unit.

### **Refusal of Eviction**

19. At the hearing, the Tenant raised an allegation under s. 83(3)(b) of the Act. The Tenant testified that he complained to the City of Oshawa regarding the Landlords' violation of municipal safety standards with respect to the unit. The Tenant asserted that as a result of his complaint, the Landlords now seek his eviction with an ultimate goal of re-renting the unit at a higher rent.

20. On the basis of the evidence provided, and as detailed in paragraphs 16 and 17 above, I find that the Landlords in good faith seek to remedy the non-conforming safety issues in the rental unit – as directed by the municipality, and as requested by the Tenant. I find that the Landlords are fulfilling their responsibility to provide a unit to the Tenant that complies with safety standards, pursuant to s. 20(1) of the Act.
21. The Landlord testified, as provided in paragraph 13, that the unit will be available to the Tenant to re-occupy upon the completion of the renovations. Section 53 of the Act provides the Tenant with an opportunity to re-occupy the unit at the same rent. For these reasons, I find that the Landlords did not apply to temporarily evict the Tenant in retaliation for the Tenant's complaint to the city. Accordingly, the Tenant's request that the Board refuse the Landlords' application, pursuant to s. 83(3)(b) of the Act, is denied.

### Relief from Eviction

22. 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 January 15, 2023 pursuant to subsection 83(1)(b) of the Act.
23. The Tenant testified that he is a single, currently unemployed, father who is struggling with numerous serious family issues in addition to dealing with the Landlords' application. The Tenant stated that his six-year-old daughter attends a nearby school so a temporary eviction to a location away from the school could disrupt his daughter's schooling. The Tenant added that he does not currently drive. The Tenant also noted that he has been looking for alternate rental units, but the rental market is expensive and the availability is low based on what he can afford.
24. I find that, although the Landlords in good faith require the rental unit to complete necessary safety renovations, postponing the Tenant's eviction until January 15, 2023 will provide the Tenant with more time during a restrictive rental market to secure temporary accommodation for the duration of the rental unit renovations. I find that this short postponement would not be unfair to the Landlords who have been engaged in rectifying the unit shortcomings since July 22, 2020.
25. I also note that s. 53 of the Act provides the Tenant with the right to move back into the rental unit once the repairs are completed so long as written notice is given to the Landlord:

53 (1) A tenant who receives notice of termination of a tenancy for the purpose of repairs or renovations may, in accordance with this section, have a right of first refusal to occupy the rental unit as a tenant when the repairs or renovations are completed.

### Written notice

(2) A tenant who wishes to have a right of first refusal shall give the landlord notice in writing before vacating the rental unit.

**Rent to be charged**

(3) A tenant who exercises a right of first refusal may reoccupy the rental unit at a rent that is no more than what the landlord could have lawfully charged if there had been no interruption in the tenant's tenancy.

**Change of address**

(4) It is a condition of the tenant's right of first refusal that the tenant inform the landlord in writing of any change of address.

**It is ordered that:**

1. The tenancy between the Landlords and the Tenant is terminated. The Tenant must move out of the rental unit on or before January 15, 2023.
2. The Tenant shall continue to pay the Landlords monthly rent of \$1416.80 until the Tenant vacates the rental unit.
3. If the unit is not vacated on or before January 15, 2023, then starting January 16, 2023, the Landlords may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlords on or after January 16, 2023.

**November 9, 2022**

**Date Issued**

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Frank Ebner

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.