



Order under Section 69 Residential Tenancies Act, 2006

Citation: Nguyen v Puopolo, 2022 ONLTB 9748

Date: 2022-11-02

File Number: LTB-L-051356-22

In the matter of: Basement Room 2, 3 Pauline Avenue
Toronto Ontario M6H3M7

Between: Dang Vinh Nguyen Landlord

And

Vincenzo Puopolo Tenant

Dang Vinh Nguyen (the 'Landlord') applied for an order to terminate the tenancy and evict Vincenzo Puopolo (the 'Tenant') because:

- the Tenant did not pay the rent that the Tenant owes **(L1 Application)**.
- the Landlord requires vacant possession of the rental unit in order to do major repairs or renovations to the unit. **(L2 Application)**.

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 October 18, 2022.

The Landlord's Legal Representative, Ian Shemesh and the Landlord attended the hearing.

As of 9:42 am, the Tenant was not present or represented at the hearing although properly served with notice of this hearing by the Board. There was no record of a request to adjourn the hearing. As a result, the hearing proceeded with only the Landlord's evidence.

Determinations:

L1 Application – Non-Payment of Rent

1. The Landlord served the Tenant with a valid Notice to End Tenancy Early for Non-payment of Rent (N4 Notice). The Tenant did not void the notice by paying the amount of rent arrears owing by the termination date in the N4 Notice or before the date the application was filed.
2. As of the hearing date, the Tenant was still in possession of the rental unit.
3. The lawful rent is \$800.00. It is due on the 1st day of each month.

4. Based on the Monthly rent, the daily rent/compensation is \$26.30. This amount is calculated as follows: \$800.00 x 12, divided by 365 days.
5. The Tenant has paid \$9,600.00 to the Landlord since the application was filed.
6. The rent arrears owing to October 31, 2022 are \$2,300.00.
7. The Landlord incurred costs of \$201.00 for filing the application and is entitled to reimbursement of those costs.
8. There is no last month's rent deposit.
9. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), including the impact of COVID-19 on the parties and whether the Landlord attempted to negotiate a repayment agreement with the Tenant and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Landlord was not aware of any circumstances for which relief from eviction ought to be granted and the Tenant was not present to give any evidence in this regard. I also considered that the Landlord's evidence that after the notice was served to the Tenant there was multiple attempts through mail to encourage a payment plan with the Tenant. The most recent letter to the Tenant was sometime in August 2022. The Tenant has not responded to any of these requests.

L2 Application – N13 Notice of Termination

10. The rental unit is a 2-bedroom unit in the lower level of a duplex.
11. The Landlord is undertaking major work in the residential complex. As of the date of the hearing the work has not started.
12. On October 14, 2021, the Landlord gave the Tenant an N13 notice of termination with the termination date of February 28, 2022 by sending it by Xpress Post on October 14, 2021 which was deemed served on October 19, 2022. The Landlord claims vacant possession of the rental unit is required for extensive repairs or renovations.
13. As of the date of the hearing, the Tenant was still in possession of the rental unit. The sole issue in this application is whether the Landlord indicated the right reason for termination in the N13 notice and should the Landlord have indicated in the N13 notice that the Landlord's intention was to do a demolition of the rental unit.
14. The key issue in this application is whether the Landlord's project is best characterized as a renovation or as a demolition, for the purposes of the *Residential Tenancies Act, 2006* (the 'Act').
15. For the reasons below I find that the Landlord's project constitutes a demolition.

Facts

16. The Landlord's project that he is undertaking involves extensive alterations to the residential complex and the rental unit and is in the last stage of approval. The Landlord is

required to do a geographical soil test because the residential complex is located above a subway tunnel. The Toronto Transit Corporation requires two five-foot holes in diameter and approximately fifty feet deep to test the soil. The Landlord is also doing underpinning to the entire basement which will result in higher ceilings of approximately eight feet. Due to safety issues and large holes in the rental unit during the underpinning process, the rental unit is required to be vacant.

17. The Landlord stated the rental unit will be changed from a two-bedroom unit to space with no bedroom and will not be used for the purpose of a rental unit. The Landlord will be using it for personal use and his relatives will be living in the upper rental unit.
18. The Building Permit from the City of Toronto, permit number 21 112575 BLD 00 SR states the extent of construction authorized under this permit is limited to the description contained herein as follows:
 - a) Proposal to construct a third-floor rear addition, second and third floor rear decks, underpinning and basement finishing. Scope of work also includes interior alterations to the existing semi-detached dwelling to create one secondary suite (located on the second and third floor).
19. The Landlord has paid the Tenant compensation in the amount of \$800.00 which is equal to one months rent. This was mailed to the Tenant on December 5, 2021 via Canada Post.
20. 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.
21. The Landlord's Legal Representative states the Tenant was offered first right of refusal by a phone call and a letter to the Tenant on the same day the N13 Notice of Termination was served, and he refused the first right of refusal.

Law and Analysis

22. The relevant portions of the Act are as follows:

50(1) A landlord may give notice of termination of tenancy if the landlord requires possession of the rental unit in order to;

- a) demolish it
- b) convert it to a use for a purpose other than residential premises; or
- c) do repairs or renovations that are so extensive that they require a building permit and vacant possession of the rental unit.

(2) The date for 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.

(3) A notice under clause (1) (c) shall inform the tenant that if he or she wishes to exercise the right of first refusal under section 53 to occupy the premises after the repairs or renovations, he or she must give the landlord notice of that fact in accordance with subsection 53 (2) before vacating the rental unit.

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.

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

(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.

(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.

202 (1) In making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so,

- a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
- b) may have regard to the pattern of activities relating to the residential complex or the rental unit.

23. The distinction between an extensive renovation and a demolition matters because if the unit is extensively renovated, the tenant has a right of first refusal: the tenant may move back into the rental unit once the renovations are complete if the tenant wishes to do so. If the unit is demolished, the tenant has no right of first refusal.
24. The fact that the Act distinguishes renovations and demolitions by the tenant's right of first refusal also indicates an intention in the Act to preserve tenancies where it is possible to do so.
25. This essential difference between a tenant's rights in a renovation situation and a tenant's rights in a demolition situation offers an indication as to how a demolition should be defined as opposed to an extensive renovation, for the purposes of the Act. In a situation where the rental unit no longer exists after the landlord has completed the intended work it is not possible for the tenant to exercise a right of first refusal and move back into the unit and continue the tenancy.
26. Accordingly, a project should be considered a "renovation" under the section 50(1)(c) of the Act where it is possible for the tenant to move back into the unit when the project is

completed. A project should be considered a “demolition” under section 50(1)(a) of the Act where it is not possible for the tenant to move back into the unit.

27. This is the same approach taken in Board in TSL-51257-14-RV (Re), 2015 CanLII 22344 (ON LTB). In that matter the project involved a nine-storey addition to the top of the existing tower and the scope of the work involved demolition of “demising walls and units on each of the existing floors”, and the construction of the “super structure” that will support the additional floors. The Landlord submitted architectural drawings of the complex which show the current configuration of the tenant’s unit will disappear with the removal of walls and changes to the floor configuration. Member Savoie determined at paragraph 27 that “the work the Landlord intends to undertake would be in the nature of demolition and not conversion. The project will effectively cause the rental unit to disappear and change irrevocably.”
28. In this case, it will not be possible for the Tenant to move back into the rental unit after the alterations to the rental unit and residential complex are completed. This project will effectively cause the 2-bedroom rental unit to no longer exist and the renovated area will not have a bedroom making it non liveable space for the Tenant to return to. Therefore, I find that the project the Landlord intends to undertake constitutes a demolition, not a renovation, of the rental unit.
29. The Landlord incorrectly identified “renovation” as the intended activity on the N13 Notice of Termination. Therefore, the N13 Notice does not correctly identify the ground for the eviction being sought and is invalid.
30. This order contains all reasons for the decision. No other reasons will be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenant is terminated unless the Tenant voids this order.
2. **The Tenant may void this order and continue the tenancy by paying to the Landlord or to the LTB in trust:**
 - \$3,301.00 if the payment is made on or before November 13, 2022. See Schedule 1 for the calculation of the amount owing.
3. The Tenant may also make a motion at the LTB to void this order under section 74(11) of the Act, if the Tenant has paid the full amount owing as ordered plus any additional rent that became due after November 13, 2022 but before the Court Enforcement Office (Sheriff) enforces the eviction. The Tenant may only make this motion once during the tenancy.
4. **If the Tenant does not pay the amount required to void this order the Tenant must move out of the rental unit on or before November 13, 2022**
5. If the Tenant does not void the order, the Tenant shall pay to the Landlord \$2,174.40. This amount includes rent arrears owing up to the date of the hearing and the cost of filing the application. See Schedule 1 for the calculation of the amount owing.

6. The Tenant shall also pay the Landlord compensation of \$26.30 per day for the use of the unit starting October 19, 2022 until the date the Tenant moves out of the unit.
7. If the Tenant does not pay the Landlord the full amount owing on or before November 13, 2022, the Tenant will start to owe interest. This will be simple interest calculated from November 14, 2022 at 4.00% annually on the balance outstanding.
8. If the unit is not vacated on or before November 13, 2022, then starting November 14, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
9. 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 November 14, 2022.
10. The Landlord's L2 application is dismissed.
11. On or before November 16, 2022, the Tenant shall return the compensation to the Landlord in the amount of \$800.00. If the cheque has not been cashed by the Tenant, the Tenant will return the uncashed cheque.

November 2, 2022

Date Issued

Trish Carson

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 expires on May 14, 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.

**Schedule 1
SUMMARY OF CALCULATIONS**

A. Amount the Tenant must pay to void the eviction order and continue the tenancy if the payment is made on or before November 13, 2022

Rent Owing to November 30, 2022	\$12,700.00
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,600.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount the Landlord owes the Tenant for an{abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$
Total the Tenant must pay to continue the tenancy	\$3,301.00

B. Amount the Tenant must pay if the tenancy is terminated

Rent Owing to Hearing Date	\$11,573.40
Application Filing Fee	\$201.00
NSF Charges	\$0.00
Less the amount the Tenant paid to the Landlord since the application was filed	- \$9,600.00
Less the amount the Tenant paid into the LTB since the application was filed	- \$0.00
Less the amount of the last month's rent deposit	- \$
Less the amount of the interest on the last month's rent deposit	- \$0.00
Less the amount the Landlord owes the Tenant for an {abatement/rebate}	- \$0.00
Less the amount of the credit that the Tenant is entitled to	- \$
Total amount owing to the Landlord	\$2,174.40
Plus daily compensation owing for each day of occupation starting October 19, 2022	\$26.30 (per day)