



Order under Section 69 Residential Tenancies Act, 2006

Citation: Joseph v Bennett, 2026 ONLTB 20507

Date: 2026-03-09

File Number: LTB-L-035651-24

In the matter of: 87 OXFORD ST
HAMILTON ON L8R2W9

Between: Emil Joseph Landlord

And

Franklin roy Bennett Tenant
Diosmelisy Bennett

Emil Joseph (the 'Landlord') applied for an order to terminate the tenancy and evict Franklin roy Bennett and Diosmelisy Bennett (the 'Tenant') because:

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

The Landlord also claimed compensation for each day the Tenant remained in the unit after the termination date.

The application was resolved by order LTB-L-035651-24 issued on July 3, 2025. On October 31, 2025 the Board issued order LTB-L-035651-24-RV-IN2 directing the application to be reheard.

The rehearing of the application was held by videoconference on January 21, 2026.

The Landlord and the Tenant, Franklin Bennett, attended the hearing. The Landlord was represented at the hearing by Peter Guzina. The Tenant was represented by Ashley Wilson.

Determinations:

1. On April 11, 2024, the Landlord gave the Tenant an N13 notice of termination with a termination date of August 31, 2024. The Landlord claims vacant possession of the rental unit is required for demolition. On that basis the Landlord seeks to terminate the tenancy.
2. As explained below, the notice of termination is invalid. Therefore, the application is dismissed.

Background

3. The Landlord purchased the property and intends to undertake substantial construction work to the building. The Landlord's evidence was that the house is approximately 120 years old and requires significant structural work.
4. The Landlord testified that the project involves removing the interior of the house down to the exterior brick shell and rebuilding the interior. The Landlord's evidence was that once the work is completed the building will contain two residential units: one unit on the upper level and one unit on the main floor including the basement.
5. The Landlord therefore served the Tenant with an N13 notice indicating that the Landlord intends to demolish the rental unit.
6. The Tenant submits that the Landlord's project does not constitute a demolition. Instead, the Tenant argues that the project is a renovation because the exterior structure of the building will remain intact and the work primarily involves altering the interior configuration of the building.

Demolition or Renovation

7. Section 50 of the *Residential Tenancies Act, 2006* (the 'Act') permits a landlord to terminate a tenancy where the landlord intends to demolish the rental unit. The Act does not contain a definition of the term "demolition."
8. In *Two Clarendon Apartments Limited v. Sinclair*, 2019 ONSC 3845 the Divisional Court accepted the Board's conclusion of what constitutes a renovation of a unit, and what constitutes a demolition of a unit. That decision states:

"In a situation where the rental unit continues to exist, albeit in an extremely altered form, it is possible for the tenant to exercise a right of first refusal, because the rental unit is still there: the tenant may move back and continue the tenancy. In a situation where the rental unit is gone, it is not possible for the tenant to exercise a right of first refusal: the rental unit is no longer there and so the tenant cannot move back. The fact that the Act distinguishes renovations and demolitions by the tenant's right of first refusal shows that the intention of these sections of the Act is to preserve tenancies where it is possible to do so.

Accordingly a project will be defined as a renovation under the Act in a case where it is possible for the tenant to move back into the unit and a project will be defined as a demolition where it is not possible for the tenant to move back into the unit."

9. The Landlord also provided architectural drawings indicating that the building will ultimately contain two residential units once the work is completed. Importantly, however, the Landlord acknowledged that the exterior brick structure of the house will remain and that the project involves rebuilding the interior of the existing structure.
10. I accept the Landlord's evidence that the proposed work will be extensive. However, the determinative issue is not the magnitude of the work but whether the residential structure will cease to exist.

11. In this case the exterior structure of the building will remain intact. The project involves removing and rebuilding the interior of the building rather than removing the building itself.
12. Consistent with the reasoning in *Two Clarendon* substantial interior alterations that leave the exterior structure intact are properly characterized as renovations rather than demolitions.
13. In this case the end result of the renovations will convert the residential complex into two units. While that may be the case, it is still possible for the Tenant to move back into the rental unit albeit in an extremely altered form. This is a scenario contemplated by the Divisional Court in *Two Clarendon*.
14. This scenario was also considered by the Board in LTB-L-006653-23, where the Board held:

“It is only where the rental unit is gone—no longer exists in any form—such that it is not possible for the tenant to exercise a right of first refusal that work to be undertaken to a rental unit or residential complex can be considered as involving the demolition of a unit.”

15. For the foregoing reasons, I find that the Landlord’s project is properly characterized as a renovation, not a demolition.

N13 Notice of Termination

16. The Act differentiates between the rights of a tenant where a landlord requires vacant possession to demolish a rental unit and where vacant possession is required to complete repairs or renovations.
17. Where a landlord requires vacant possession to complete repairs or renovations that require the unit to be vacant, the Act provides tenants with a right of first refusal to reoccupy the unit once the work is completed.
18. That right does not arise where the landlord seeks vacant possession for demolition.
19. The Landlord submits that even if the proposed work constitutes renovations rather than demolition, the application could still proceed and the Tenant could simply be granted the right of first refusal.
20. In support of their argument, the Landlord relies on *TSL-86609-17 (Re)*. In that case, the Board determined that the proposed work constituted a renovation rather than a demolition, despite the N13 having been served on the basis of demolition, and granted the tenant a right of first refusal.
21. However, in that case the tenant had already vacated the rental unit and the validity of the notice of termination was therefore no longer at issue. In the present case, the Tenant remains in possession of the rental unit and seeks to maintain the tenancy.
22. In order for this application to proceed, the notice of termination would need to be amended.

23. There is no authority in the Act permitting a landlord to amend a notice of termination in this manner. Reason 1 (demolition) and Reason 2 (repairs or renovations requiring vacant possession) are separate and distinct grounds for termination.
24. In *Ball v Metro Capital Property Inc.* the Court of Appeal held that a notice of termination must contain sufficient particulars so that the tenant knows the case they must meet.
25. I find allowing an eviction application to proceed on a different basis than that set out in the notice would run contrary to the principles articulated in *Ball*.
26. I find it would also prejudice the Tenant. Had the Tenant been served with a notice based on renovations requiring vacant possession, the Tenant would have known they had a statutory right of first refusal and could have made decisions about whether to vacate the unit based on that information.
27. Instead, the Tenant was served with a notice claiming demolition and was required to prepare a response on that basis.
28. Given that the Landlord's basis for terminating the tenancy set out in the N13 notice is incorrect, I find the notice of termination is invalid.
29. In this case, since the Tenant has not vacated the rental unit, the appropriate remedy is, in my view, to dismiss the application.
30. Section 73.1(1) of the Act authorizes the Board to order a tenant to repay compensation paid under section 52 if the landlord's application is dismissed.
31. It is undisputed that the Landlord paid the Tenant \$1,591.32 on April 30, 2024 as compensation required by section 52 of the Act.
32. Given the dismissal of the application, I find it appropriate to order that the compensation paid be returned to the Landlord.

It is ordered that:

1. The Landlord's application is dismissed.
2. The Tenant shall pay to the Landlord \$1,591.32 which represents the return of compensation paid to the Tenant on April 30, 2024.
3. If the Tenant does not pay the Landlord the full amount owing on or before March 20, 2026, the Tenant will start to owe interest. This will be simple interest calculated from March 21, 2026 at 4.00% annually on the balance outstanding.

March 9, 2026
Date Issued

Bryan Delorenzi
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.