



Order under Section 57 Residential Tenancies Act, 2006

Citation: Starecky v McGinley Bros Inc, 2026 ONLTB 21123

Date: 2026-03-20

File Number: LTB-T-024780-25

In the matter of: Main Floor, 18 AUSTIN TERR
TORONTO ON M5R1X9

Between: Nicholas Starecky
Jessica Starecky
Tenants

And

McGinley Bros Inc
Landlord

Nicholas Starecky and Jessica Starecky (the 'Tenants') applied for an order determining that McGinley Bros Inc (the 'Landlord') was required to allow the Tenants to move back into the unit under section 53 of the *Residential Tenancies Act, 2006* (the "Act") and failed to do so.

This application was heard by videoconference on January 28, 2026.

The Tenants' Legal Representative, Joseph Beher, the first-named Tenant, the Landlord's Legal Representative, Nikki Sheppard, the Landlord's Director, Brendan Charters and the Landlord's Property Manager, Christopher Mior attended the hearing.

Determinations:

1. As explained below, the Tenants proved the allegations contained in the application on a balance of probabilities. Therefore, the Landlord must pay the Tenants \$13,123.00 by March 31, 2026 and the Landlord must allow the Tenants to move back into the rental unit when the renovations are completed or before July 1, 2026, whichever date is earlier.
2. The residential unit is the main floor of a duplex. The residential complex was previously a fourplex that the Landlord severed through a minor variance. The Landlord further sought to vary this existing two-storey semi-detached dwelling into a fourplex and that variance was approved on February 22, 2024 by the Committee of Adjustment for Toronto.
3. The Tenants vacated the rental unit voluntarily on October 31, 2024 based on the Landlord's N13 notice of termination that set out that their rental unit would be demolished.

4. I have carefully reviewed the documentary evidence before me, the testimony of the parties and I have considered the parties' submissions. I refer to the material facts and relevant evidence below.

Evidence of the Tenant, Nicholas Starecky (NS)

5. NS spoke on behalf of both Tenants as his wife was caring for their newborn baby.
6. NS testified that he was served with an N13 notice of termination setting out that the Landlord would be demolishing his rental unit and provided a building permit number # 24 170411BLD 00 SR. He stated that despite the N13 stating that the rental unit would be demolished, he sent an email to the Landlord advising him that he wished to return once the renovations were completed.
7. NS explained that although he had sublet the rental unit out to other tenants for a period of time, he and his family intended to return to Toronto in 2024 so that his son could attend school. The Tenants were residing in Maxwell during the subletting of their unit as they own an investment property in the village and it is normally rented out to tenants.
8. NS stated that he and his wife had already chosen the school where his son would attend and that it was a very reputable school in Toronto. NS stated that he did not plan to send his son to the small school in Maxwell as the school was very small and not well attended.
9. NS stated that his sub-tenants were planning to stay at the rental unit until December 31, 2024 which was the termination date on the notice, but due to the extreme renovations occurring in and around the unit, they vacated in early October of 2024. NS and his family returned to the rental unit in October but quickly realized that the unit was not safe for their 4-year-old son who was sent to live with his grandparents. He also stated that his wife's pregnancy was a high-risk pregnancy and they were very concerned about their own safety in the rental unit.
10. NS stated that the noise and dust in the rental unit were intense and they had to bring in jugs of water and had to walk around concrete chipping guns. He stated that attempting to live in that construction zone was very stressful and dangerous. Tragically, the Tenants lost their 33 week-old child and left the rental unit on October 31, 2024.
11. NS testified that they never would have left the rental unit as they planned on living there indefinitely where they would raise their young family. He stated that they had enrolled their son at the Maxwell school out of necessity but transferred him to a different school in another village due to the severe limitations of the Maxwell school. NS stated that this caused confusion and stress to his son and to his wife and himself.
12. NS stated that losing their daughter was heart-wrenching but having to leave the rental unit due to the dangerous condition of the unit was also very stressful. He stated that he was unsure if they would be able to return. He stated that he was aware that the Landlord would be doing substantial renovations and expected to be out of the rental unit for a period of time. He hoped to be able to return to the unit after the renovations and raise his family in Toronto as planned.

13. NS stated that the Landlord never intended to demolish his rental unit but instead sought to increase the number of rental units to increase his profit. NS reviewed the plans provided by the Landlord which showed that his rental unit was not demolished but that the Landlord had added a bedroom, upgraded the systems, added some windows and doors but his rental unit remained and he felt that he had a right to return to that unit.
14. NS said he was very frustrated with the situation which has only increased his family's stress and caused them increased emotional distress.
15. NS is seeking a rent abatement of \$9,225.00 for October, November and December of 2024 due to the intense construction occurring which caused the rental unit to be unsafe. He is seeking \$10,000.00 in compensation due to the Landlord's bad faith actions, an LTB fine against the Landlord and he is seeking to return to the rental unit once the renovations are complete.

Evidence of the Director of the Landlord, Brendan Charters (BC)

16. BC testified that he has been in the construction business for many years and has extensive experience with building renovations and new builds.
17. BC testified that due to the extent of the construction done to the residential unit, the residential unit was demolished and that the Tenants do not have a right to return to the unit. He confirmed that the construction is continuing and provided the architectural drawings and pictures of the state of the residential complex.
18. BC provided the approved building permits from the City of Toronto and he provided the decisions for the minor variances that were approved for the project. He explained that basically the building was converted from a 2-unit building to a 4-unit building.
19. BC stated that with this project, he added a third floor which included two rental units on top of the Tenants' unit and he planned to add two more rental units in the basement of the building. BC stated that during the project, fire separations were compromised, new fire separations were added, the electrical system and HVAC system had to be updated to support the bigger building and the water supply had to be increased. He stated that the boiler heating system was now a forced air system and all of the utilities were updated.
20. BC explained that the Tenants' rental unit had been brought down to the bare studs, the fire separations were compromised, the floor joists were exposed and the utilities had all been disconnected for the construction. He stated that certain walls had been moved or altered, insulation had been blown in the walls, certain entrances had been closed and a new entrance had been created. He understood that the Tenants' rental unit was demolished.
21. In cross-examination, BC was asked how the square footage of the apartment changed. He stated that due to the insulation process, the perimeter walls lost 6 inches. After completing some calculations, he estimated that there was a 5% loss of space.

22. In cross-examination, BC was asked to read a notation on the approved drawings that stated "This permit has been reviewed for the proposed phase 01 interior demolition only. Any other work is beyond this review." He was asked if he still believed that the rental unit had been demolished and BC confirmed that he did.
23. In cross-examination, BC was asked if he would allow the Tenants to return to the rental unit and he responded that they did not deny their request. He explained that with this demolition, it was not possible for them to return as their unit no longer exists.
24. BC was asked if the hydro, gas and water were sufficient prior to the construction and BC confirmed that the building had sufficient utility capacity. BC confirmed that the electrical, the gas and the water supply had to change due to the fact that the complex included two units, then increased to four units.
25. BC was asked if any of the exterior walls were removed and he stated that they had not been touched. He was further asked if the footprint of the building changed and he confirmed that it did not.

Evidence of Christopher Mior (CM)

26. CM testified that he is the property manager for the Landlord and he is the person who communicates with the Tenants and maintains the property. He confirmed the timeline and relayed the conversations that he had with the Tenants.

Final Submissions

27. Mr. Behar's closing submissions included that the Landlord did not demolish the rental unit but instead renovated the residential complex to add two more rental units. He stated that the Tenants' unit had minor changes and upgrades and the Tenants have the right to return to their home. Mr. Behar relied on the Divisional Court's *Two Clarendon Apartments* case which clearly set out the difference between a renovation and a demolition and that a rental unit that continues to exist (even in an altered form) can be returned to. Further in that case, demolish was defined as "must cause it to disappear and change irrevocably." He submitted that this rental unit did not disappear but instead it was renovated and the utilities were upgraded to support a 4-unit building. Mr. Behar maintained that the Landlord's actions were done in bad faith.
28. Ms. Sheppard's closing submissions included that the Landlord was responding to the housing crisis in Toronto by providing more residential units. However, she also submitted that the construction work completed by the Landlord was a demolition as the unit was brought down to its studs, was changed irrevocably and thus this case does comply with *Two Clarendon Apartments*. Finally, Ms. Sheppard questioned whether the Tenants had met their obligations regarding their right of first refusal as they were residing in Maxwell and did not seem to want to return to Toronto. Ms. Sheppard submitted that the Landlord acted in good faith throughout the process.

Analysis

29. The N13 notice confirmed the details of the work as “We are removing the roof and adding the third floor with new units. We are underpinning and finishing the basement for the addition of new rental suites. Full upgrade to all electrical, plumbing and HVAC throughout the building.”
30. The architectural drawings (forming part of the approved permit) set out “This permit has been reviewed for the proposed phase 01 interior demolition only.” The rental unit was upgraded, rearranged and continues to exist.
31. The word “demolish” means to “pull down, completely destroy or break” and in construction terms, whether the rental unit will continue to exist in some form after the work is completed. In this case, the rental unit was not destroyed but a new bedroom was added, renovations were completed and utilities were upgraded to support the new four unit building. The footprint of the building has not changed and this was confirmed by the Landlord.
32. Section 53 of the *Residential Tenancies Act*, 2006 (hereinafter referred to as the “Act”) allows a tenant who receives an N13 notice of termination for repairs or renovations to provide a notice to the landlord advising that they would like to return to the unit after the renovations are complete. Tenants who are served with a notice of termination due to the demolition of the rental unit are not provided with an opportunity to return as the unit is assumed to no longer exist.
33. In this case, despite the N13 notice setting out that the unit would be demolished, the Tenants emailed the Landlord advising that they would like to return after the renovations. Based on the details of the proposed work set out on the notice, the Tenants hoped that they may be able to return to their unit and ensured that the Landlord knew of their intention.
34. The main purposes of this Act include providing protection for residential tenants from unlawful rent increases and unlawful evictions. As such, it cannot be the intention of the Act that a landlord would be able to evict a tenant without that tenant having a right of first refusal to reoccupy the unit by renovating a complex to change the configuration or size of the tenant’s rental unit.
35. After hearing testimony from the parties, reviewing architectural drawings, building permits and pictures of the ongoing construction, I am satisfied that the Landlord performed renovations on the rental unit and did not demolish the rental unit. The Tenants have the right to return to the unit under section 53 of the Act.
36. Subsection 57(1)(c) of the Act requires the Tenants to prove each of the following on a balance of probabilities to be successful with their application:
 - The Landlord gave the Tenants an N13 notice of termination under section 50 of the Act;
 - The Tenants vacated the rental unit as a result of the N13 notice of termination;

- The Landlord did not demolish, convert or repair or renovate the rental unit within a reasonable time after the former Tenants vacated the rental unit; and
- The Landlord served the N13 notice of termination in bad faith.

37. The first, second and third criteria have been met as the Landlord served an N13 notice on the Tenants, the Tenants vacated the rental unit as a result of the N13 notice of termination, and the Landlord did not demolish the rental unit within a reasonable time.

38. In Elkins v. Van Wissen, 2023 ONCA 789, the Court of Appeal found that in light of the tenant protection focus of the Act, the LTB must consider all the evidence before it that is relevant to the landlord's bad faith. It found that a decision maker must consider the party's conduct prior to, at the time of, and subsequent to the giving of the notice of termination. It would be an error of law if I failed to consider the whole situation and assess the evidence at each stage. Although this case dealt with an application under section 48, this remains the applicable test for any bad faith eviction applications.

39. When I review the Landlord's conduct prior to issuing the N13, at the time of and subsequent to the giving of the N13, I find that the Landlord's intentions were consistent in that he wanted to renovate, upgrade and add additional units to increase his profits. The construction to the residential complex commenced prior to the serving of the notice, it continued aggressively while the Tenants were residing in the rental unit and the majority of the project appears almost complete 14 months later. The facts are that the Landlord added a third floor with two units, he has added two basement apartments or plans to and he has not demolished the Tenants' rental unit.

40. The Landlord testified that he has been in the construction business for many years and I am satisfied that he knew that this project was a renovation and not a demolition. I believe the Landlord's actions were self-serving and were an attempt to circumvent the tenant protections in the Act. As such, I find that the Landlord served the N13 notice of termination in bad faith

41. Having made this finding, I find that the Tenants are successful with their T5 application.

Remedies

45. The next issue before me is the quantum of remedies to award the Tenants. The remedies that the Tenants are requesting in the application include a rent abatement of \$9,225.00, \$10,000.00 in general compensation, an LTB fine, the right to return to the unit when completed and the filing fee.

46. With respect to the abatement of rent, the Tenants are seeking the reimbursement of their rent for October, November and December of 2024 due to the Landlord's ongoing, substantial renovations. The Tenants' monthly rent was \$3,075.00. The Tenant provided oral evidence of the condition in the rental unit where he and his family resided until October 31, 2024. As I was not provided with evidence that rent had been paid for November or December, I am only going to deal with the abatement claim for October of

2024. I find that the Tenants' reasonable enjoyment of their rental unit would have been significantly impacted after receiving the N13 notice and residing in the rental unit while it was unsafe and without water. I am awarding the Tenants 100% of their rent for October which is \$3,075.00.

47. The Tenants are requesting \$10,000.00 in general compensation for the emotional stress of the situation including the family's disruption, the issues with the Tenants' son's school registration and the fact that they had to fight with the Landlord for an opportunity to move back into their own home. The Tenant's testimony included that he and his wife always planned to raise their family in their home in Toronto and the Landlord's actions caused their plans to have to change drastically. The Tenants should have been given an N13 with the reason being renovation of the rental unit and the Tenants could have prepared for that temporary time period by finding temporary, alternative accommodations. Instead, the Tenants received the N13 with the reason being demolition and voluntarily left the rental unit, allowing the Landlord to move forward with his project.
48. Having considered these circumstances, I find it appropriate to order the Landlord to pay \$10,000.00 to the Tenants in general compensation for the emotional distress for the whole family, the serious disruption and the inconvenience caused by the Landlord serving the N13 in bad faith.
49. The Tenants are requesting that I order that the Landlord pay a fine in this case due to the Landlord's contraventions of the Act.
50. Given the total amount of the abatement is \$13,075.00 I do not believe that a further administrative fine is required, as I believe the abatement itself serves as an adequate general and specific deterrent against the impugned conduct. No administrative fine is ordered.
51. The Tenants are requesting that I order that they be allowed to return to the rental unit when the renovations are completed. They are also asking that the Landlord provide updates to them so that they can plan their return to the rental unit accordingly.
52. As mentioned earlier, the Landlord's N13 notice should have set out that he was completing substantial renovations requiring vacancy of the rental unit rather than demolition of the rental unit. I am satisfied that the Tenants provided written notice to the Landlord prior to vacating the rental unit that they wished to return to the unit once the renovations were completed. As the Landlord failed to afford the Tenants the right of first refusal, section 57.1 of the Act allows the Tenants to return to the rental unit once the renovations are completed.
53. The Tenants incurred a cost of \$48.00 to file this application and they are entitled to recover that cost.

It is ordered that:

1. The total amount the Landlord shall pay the Tenant is \$13,123.00. This amount represents:
 - \$3,075.00 for a rent abatement;
 - \$10,000.00 for general compensation; and
 - \$48.00 for the cost of filing the application.
2. The Landlord shall pay the Tenants the full amount owing by March 31, 2026.
3. If the Landlord does not pay the Tenants the full amount owing by March 31, 2026, the Landlord will owe interest. This will be simple interest calculated from April 1, 2026 at 4.00% annually on the balance outstanding.
4. The Landlord shall allow the Tenants to move back into the rental unit once the renovations are completed or by July 1, 2026, whichever date is earlier.
5. The Landlord shall provide regular updates to the Tenants regarding the status of the renovations so as to accommodate their return.
6. If the Landlord does not allow the Tenants to recover possession of the unit on or before July 1, 2026 then beginning July 2, 2026 the Tenants may file this Order with the Court Enforcement Office (Sheriff) so that the Order may be enforced.
7. Upon receipt of this Order, the Enforcement Office is directed to give possession of the unit to the Tenants.

March 20, 2026

Date Issued

Carrie Bertrand

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.