



Order under Section 77(8) Residential Tenancies Act, 2006

Citation: Luu v Notley, 2023 ONLTB 65070

Date: 2023-12-01

File Number: LTB-L-073480-23-SA

In the matter of: 9 ELITE RD
CALEDON VILLAGE ON L7K0L2

Between: Mai Huyen Trang Luu

And

Christopher Notley

I hereby certify this is a
true copy of an Order dated

Dec 1 2023

A. Mariani

Landlord and Tenant Board

Landlord

Tenant

Mai Huyen Trang Luu (the 'Landlord') applied for an order to terminate the tenancy and evict Christopher Notley (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-073480-23, issued on September 28, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-073480-23.

The motion was heard by videoconference on November 20, 2023.

The Landlords, Mai Huyn Trang Luu and Mike Duong, the Landlords' Representative, R Basser, the Tenant and the Tenant's Representative, Dan McIntyre attended the hearing. Brittany Kostuck, Realtor, attended as witness for the Tenant and Anne Voung, Realtor attended as witness for the Landlord.

Determinations:


1. The Tenant gave the Landlord notice to terminate the tenancy effective November 30, 2023 which is not disputed.
2. After considering all of the circumstances, I find that it would not be unfair to set aside order LTB-L-073480-23 because the application is statute barred.
3. There was a Notice of Fulfilment that included conditions related to the lease dated November 7, 2022, signed by the Tenant on November 17, 2022. The lease agreement shows it was signed by the parties on November 11, 2022. A text message from the Landlord's Agent to the Tenant's Agent dated November 17, 2022, at 2:47 stated, "Pls prepare N9 and deposit too", and in that same text chain at 4:34 p.m. it states, "the N9 due to be signed but should be signed and dated after the legal lease is signed because that's the way around it". The tenancy started December 1, 2022.

4. Section 37(4) of the Act states, a tenant's notice to terminate a tenancy is void if it is given at the time the tenancy agreement is entered into or as a condition of entering into the tenancy agreement. The Board is required to ascertain the true substance of transaction pursuant to section 202 of the Act. Section 3 of the Act indicates despite any agreement or waiver to the contrary, the Act prevails.
5. I find, irrespective of who initiated discussions about the N9 Notice, on a balance of probabilities, it was a condition of the tenancy agreement and signed when the tenancy was entered into because of the following: the N9 Notice was signed on November 18, 2022 which was before the tenancy started on December 1, 2022; the text communication between the Real Estate Agents on November 17, 2022 at 2:47 p.m. and 4:34 p.m refer to the N9 Notice being signed after the lease which suggests the lease was likely backdated. The Notice of Fulfilment is part of the tenancy agreement, and it was signed on November 17, 2022, which is one day after the Tenant signed the N9 Notice; this was also supported by the Realtors testimonies as both confirmed they discussed the N9 Notice during the period the lease was signed.
6. Despite their agreement, there can be no termination of a residential agreement except as provided for in this Act. Section 37(4) of the Act makes it mandatory that the Board has no jurisdiction to issue an order of termination based on an N9 Notice that is void. As such, the motion must be granted.

It is ordered that:

1. The motion to set aside Order LTB-L-073480-23, issued on September 28, 2023, is granted.
2. Order LTB-L-073480-23, issued on September 28, 2023, is set aside and cannot be enforced.

December 1, 2023
Date Issued



Sandra Macchione

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.