

Order under Section 77
Residential Tenancies Act, 2006

File Number: CEL-04716-22

In the matter of: 2, 774 4TH AVENUE EAST
OWEN SOUND ON N4K2N6

Between: Emanuel Arruda

Landlord

and

Dennis Buttineau
Zach Buttineau

Tenants

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

JULY 29 2022

Landlord and Tenant Board

Emanuel Arruda (the 'Landlord') applied for an order to terminate the tenancy and evict Dennis Buttineau and Zach Buttineau (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

This application was heard by videoconference on July 26, 2022.

The Landlord and the first-named Tenant attended the hearing. I note the Tenant joined the hearing room at 9:48am.

Also in attendance was the Tenant's support worker, Erin Koner.

Determinations:

Preliminary Issue: Notice of Hearing not Received by the Tenant

1. At the hearing, the Tenant testified that he came late to the hearing because he did not receive the notice of hearing. The Tenant testified that he believes someone may have taken his mail as he had been experiencing stolen cheques as well as other mail go missing in the past few months.
2. The Tenant describes the residential complex as a house in which the Tenants occupy the upper level; there are separate tenants in the basement. Both share a mailbox located outside the house. When mail is delivered to the mailbox, the tenants retrieve their own mail. Sometimes, the basement tenant leaves his mail by the doorsteps.
3. I asked the Tenant if a police report was filed about the mailbox issue and the Tenant confirmed it was not.
4. The Tenant further testified that it was only when the Landlord sent him a text earlier that morning indicating he had missed the hearing that he went to the legal clinic to obtain assistance with technology and join the hearing room.

5. Although there was no adjournment request before the Board by the Tenant, I note the following:
 - a) The Board's records show the notice of hearing was sent to the Tenants at the rental unit on July 4, 2022 and emailed to them as well. The notice of hearing packages did not return to the Board from Canada Post, as of the hearing date nor did they return as undeliverable via email.
 - b) It is unclear why a tenant, who experiences issues with their mailbox, particularly stolen mail, would not address this with higher authorities, particularly as mail theft is a criminal offence and/or inform the Landlord of such issues; and
 - c) It is also unclear how the Tenant was able to have his support worker to attend the hearing with him on an urgent basis.
6. Given the above, I find the Tenants' assertion that he was unaware of the hearing is not credible.

L3 APPLICATION

7. This application was filed pursuant to section 77 of the Residential Tenancies Act, 2006 (the 'Act'). Applications of this nature normally result in the Board issuing an eviction order without a hearing. However, this application was sent to a hearing as the L3 application names two Tenants but the N11 was signed by only one of them.
8. The Landlord's evidence was on March 23, 2022, the parties signed a N11 Agreement to terminate the tenancy as they had some discussions between them about the arrears that were outstanding, and both parties negotiated terminating the tenancy on June 30, 2022 in exchange for the Landlord paying the Tenants \$1,200.00. The Landlord testified that he paid the Tenant \$1,200.00 shortly thereafter, but the Tenants failed to vacate the rental unit.
9. The Landlord further testified that upon receiving the Member's Endorsement form directing this matter to a hearing, he was able to obtain the second-named Tenant's signature on the N11 for the same termination date (on April 28, 2022) and submitted that to the Board as well.
10. The Landlord seeks a termination of the tenancy as he has honoured his part of the agreement, while the Tenants have not.

Tenant's Evidence

11. The Tenant testified that this tenancy began four years ago, and that he resides in the rental unit with the two other Tenants who live up in the loft and he resides in the main floor.
12. The Tenant submits that the Landlord's application should be dismissed for two reasons: first, there is a third tenant that resides in the rental unit but has not signed the N11 nor has she been named on the application.

13. The Tenant testified that Alexis Montgomery resided in the rental unit and that she was the second-named Tenant's partner. He also testified that from the beginning of the tenancy, she resided in the rental unit with the Tenants and continues to live there as of the date of the hearing.
14. The second issue identified by the Tenant is that the N11 submitted by the Landlord does not contain the Tenants' signatures as they never agreed to termination the tenancy.
15. The Tenant submits that neither himself nor the second-named Tenant ever signed an agreement to terminate the tenancy, nor did they express a desire to vacate the rental unit. Later in his evidence the Tenant confirmed that he had been looking for a new place but had not secured one yet. The Tenant also recalls conversing with the Landlord about compensation where the Landlord indicated he would pay them \$4,000.00 once they moved out of the rental unit.
16. Upon sharing the N11 on the screen at the hearing, the Tenant indicated he did not recognize this document and was certain that he did not sign the agreement.
17. The Tenant also confirms receiving \$1,200.00 from the Landlord but he testified that this was for cleaning up his items stored in the front of the house because the Landlord received a Notice of Violation from the City. However, later in his evidence, the Tenant testified that the Landlord disposed of \$8,000.00 worth of his items (including snowboards and tools) because the Tenants failed to clean up the same area.
18. In the alternative, the Tenant seeks a delay in eviction of 3 months to secure housing elsewhere. He testified that he receives limited income from Ontario Works benefits and is trying to get a subsidized housing unit. He also testified that he currently has a broken foot.

Landlord's Response

19. With respect to the issue of AM as the third tenant, the Landlord testified that he took possession of the property in November 2021 from the previous owner who told him that the Tenants were the sole occupants of the rental unit. The previous owner also told him that AM had left the rental unit before November 2021.
20. With respect to the N11 agreement, the Landlord submits the signatures are legitimate and can produce a certificate that verifies these electronic signatures.
21. With respect to the \$1,200.00 the Landlord submits this was negotiated by the Tenants and paid to them so that they could vacate the rental unit by the termination date.
22. Finally, with respect to the request for an extension of the eviction date, the Landlord was not agreeable to it as he believed this was another delay tactic from the Tenants to live rent-free and "milk the system."

ANALYSIS

23. Based on the evidence before the Board, I do not find the Tenant's evidence to be credible as it was inconsistent, contradictory, and vague. Further it is not supported by

corroborating evidence. I prefer the Landlord's evidence as it has remained consistent throughout the hearing.

24. While the Tenant submits that AM is a tenant and has always resided at the rental unit and continues to reside there, it is unclear why she was not present at the hearing to confirm this, especially since the Tenant's argument relied on this fact.
25. The Landlord submits that he has never had communications with AM nor has he seen her at the rental unit, and additionally, he was told that only the two Tenants lived at the property.
26. I asked the Landlord to submit a copy of the lease agreement at the hearing, which confirmed that AM was named as a tenant and that she also signed the tenancy agreement. This confirms that AM may have lived at the rental unit and/or been a tenant when the lease began, however, her current status at the rental unit is in dispute.
27. What is before the Board is a classic case of "he said, he said" where two opposite claims are being made about AM's status as a tenant. Without corroborating evidence like that from someone else, preferably AM, there is simply insufficient evidence to establish that it is more likely than not that AM resides and/or is a tenant at the rental unit, since the Landlord cannot prove a negative claim.
28. With respect to the Tenants never signing the N11, I find that this assertion is not credible. I say this based on the following.
29. First, the Authentisign certificates submitted by the Landlord confirm that both Tenants accessed the N11 and signed it from the same 'gmail' email address belonging to the first-named Tenant. While the Tenant submits that the e-signature does not match that found on the lease agreement, I do not find this to be applicable as the lease was not electronically signed.
30. Second, while the Landlord states the parties agreed to terminate the tenancy in exchange for \$1,200.00, and the Tenant confirms receiving this amount but states that it was to clean up the front, the Tenant also states that the Landlord took away his property because he did not clean up. It is unclear why the Landlord would pay the Tenant to clean up the Tenant's belongings while also dispose of the Tenant's belongings because the Tenant failed to clean it up. So I find the Tenant's explanation for receiving the \$1,200.00 to be contradictory and illogical.
31. Finally, if the Tenants were not interested in moving out of the rental unit, it is unclear why the Tenants were and are looking for alternative housing at the same time.
32. Given the above, I find it is more likely than not that the Landlord and the Tenants signed an agreement to terminate the tenancy as of June 30, 2022 and the Tenants did not move out of the rental unit by the termination date set out in the agreement.
33. With respect to the Tenants' request for relief, given the Tenants' personal circumstances and the length of this tenancy, I find it appropriate to delay eviction by 30 days as the

Tenants' request for three months is excessive, given that the agreement was signed four months ago.

34. I have considered all of the disclosed circumstances in accordance with subsection 83 of the Residential Tenancies Act, 2006 (RTA), and find that it would not be unfair to postpone the eviction until August 29, 2022 pursuant to subsection 83(1)(b) of the Act.
35. This order contains all of the reasons for the decision within it. No further reasons shall be issued.

It is ordered that:

1. The tenancy between the Landlord and the Tenants is terminated. The Tenants must move out of the rental unit on or before August 29, 2022.
2. If the unit is not vacated on or before August 29, 2022, then starting August 30, 2022, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 August 30, 2022.



July 29, 2022
Date Issued

Sonia Anwar-Ali
Member, Landlord and Tenant Board

Central-RO
3 Robert Speck Pkwy, 5th Floor
Mississauga ON L4Z2G5

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 March 2, 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.