



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

Citation: Jimenez Kaiser v Michael, 2024 ONLTB 12892

Date: 2024-02-27

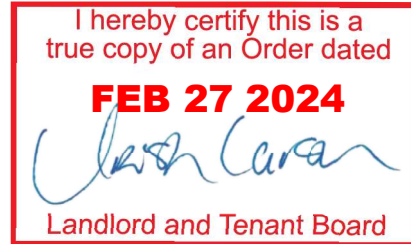
File Number: LTB-L-052014-23-SA

In the matter of: 1406- UNIT 2, 511 THE WEST MALL
ETOBICOKE ON M9C1G5

Between: Maria Norma Jimenez Kaiser
Ricardo Camarena Castellanos

And

Jay Michael



Landlords

Tenant

Maria Norma Jimenez Kaiser and Ricardo Camarena Castellanos (the 'Landlords') applied for an order to terminate the tenancy and evict Jay Michael (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-052014-23, issued on July 17, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-052014-23.

This application was originally heard on October 31, 2023, and there was not enough time to finish the proceedings. The matter was adjourned, and an Interim Order was issued on November 14, 2023. The Interim Order issued on November 14, 2023, stated that both the L3 set aside motion (LTB-L-052014-23) and the T2 application (LTB-T-035002-23) would be heard together. I proceeded on hearing the two applications together, however, two separate orders will be issued.

The motion was heard by videoconference on February 13, 2024.

The Landlord's Legal Representative, George Brown and the Landlords attended the hearing. Dante Camarena, an interpreter for the Landlord, Maria Norma Jimenez Kaiser also attended the hearing.

The Tenant attended the hearing. Tenant Duty Counsel was not present at the hearing.

Preliminary Issue- Address on the N9 and L3 Application

1. The Landlord's Legal Representative submits that the N9 notice of termination did not include the full description of the rental unit. The rental unit is a room located inside a condominium unit, which is in a condominium complex. The room the Tenant rents is considered Unit #2.

2. Both the N9 notice of termination and the L3 application state the address of the rental unit as 511 The West Mall, Unit 1406, Etobicoke, M9C 1G5.
3. The exparte order that was issued on July 17, 2023, had the address of 511 The West Mall, Unit 1406, Etobicoke, M9C 1G5.
4. I asked the Tenant if there was a reason that Unit 2 was omitted from his signed N9 notice of termination, and he stated that he was not prepared to answer that question without further legal advice.
5. On my own motion I amended to the L3 application to include Unit 2, in the description of the address of the rental unit, as I am satisfied this properly describes the rental unit.
6. While the N9 notice did not include "Unit 2", I am satisfied that the correct address of the rental unit is, 511 The West Mall, 1406-Unit 2, Etobicoke, M9C 1G5. Furthermore, the Landlords have by submitting the L3 application within a reasonable time following receipt of the N9 notice affirmed by conduct that they have accepted the Tenant's notice.

Preliminary Issue- Request for matters to be heard together.

7. The Tenant submitted a request to the Board on January 10, 2024, requesting to have the two applications LTB-L-052014-23 and LTB-T-035002-23, heard together with LTB-T-097802-23 (T2/T6 application), LTB-L-097041-23 (L9 application) and LTB-L-096347-23 (L2 application).
8. I issued a Member Endorsement on January 17, 2024, denying the request to combine the applications mentioned in Paragraph 1, and advised the parties the L3 set aside motion (LTB-L-052014-23) and the T2 application (LTB-T-035002-23) would proceed as scheduled on February 13, 2024.
9. The Tenant sent a request to the Board on February 5, 2023, requesting that all the outstanding applications between the parties be heard together. These applications include the following file numbers.

LTB-T-097802-23	T2/T6
LTB-T-004855-24	T2
LTB-T-004880-24	T2
LTB-L-097041-23	L9
LTB-L-096347-23	N12
10. At the hearing, the Tenant also stated there is another T2 application that was not included in the request from February 5, 2024, that was just filed with the Board and not yet assigned a file number. The Tenant requests this T2 application be combined with all outstanding applications between the parties.
11. At the hearing, I again denied the request to combine the files that were included in my endorsement issued on January 17, 2024. I proceeded with the scheduled applications before me.

12. At the hearing, the Tenant was given direction that they shall submit a revised request to the Board including all the file numbers the Tenant wishes to combine, including the application that was just filed once a file number is assigned. The Tenant was directed to provide reasons why the files should be combined for the Boards consideration.

Determinations:

13. The rental unit is a room located in a condominium unit that is located within a condominium complex.
14. The Tenant gave the Landlords notice to terminate the tenancy effective June 30, 2023.
15. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-052014-23.
16. The Tenant testified that they signed the N9 notice of termination on April 6, 2023, which indicated a termination date of June 30, 2023. The N9 notice was emailed to the Landlords.
17. The Tenant submits that they signed it because the Landlords kept advising the Tenant that they needed to move out as the tenancy was not working out. The Tenant stated that the Landlords told them that they were worried about the safety of the Tenant as the Tenant was having issues with other tenants in the rental unit.
18. The Tenant stated that they felt threatened by the messages that they needed to leave the rental unit.
19. The Tenant states that they were under stress and anxiety at the time and instead of filing a T2 application, they signed an N9 notice of termination.
20. The Tenant testified that near the end of June 2023, they had another place to rent that they were able to afford, however, that rental unit fell through. The Tenant testified that they then tried to find alternative accommodations but were unsuccessful.
21. The Tenant testified that they made the Landlords aware of the situation near the end of June 2023, and the Landlords responded and told the Tenant that they would help support the Tenant anyway they could emotionally. The Landlords provided the Tenant with links to hostels.
22. The Tenant testified that the Landlords also offered the Tenant the amount of \$1,000.00, to assist the Tenant with securing a new rental unit.
23. The Tenant testified that they advised the Landlords, that the amount of \$1,000.00 would not be sufficient, however, if the Landlords could provide the Tenant with the amount of \$5,000.00 than they would be able to secure a new rental unit. The Landlords declined and stated that they were not able to provide that amount of money to the Tenant.

24. On cross examination, the Tenant testified that it was reasonable for the Landlords to rely on the N9 notice of termination. The Tenant also stated that by sending the N9 notice of termination to the Landlords, the Tenant knew they were entitled to a hearing before the Board.
25. The Landlords, Maria Norma Jimenez Kaiser testified that on or about April 6, 2023, she received an email from the Tenant with an N9 notice of termination signed by the Tenant with a termination date of June 30, 2023. The N9 was signed on April 6, 2023, which provided the Landlords with a minimum of sixty days notice.
26. The Landlord's evidence is that the Landlords expected the Tenant to vacate the property on or before June 30, 2023.
27. The Landlord, Maria Norma Jimenez Kaiser stated that there was no communication with the Tenant that they wished to withdraw the N9 notice of termination. She contacted the Tenant on June 30, 2023, to inquire about what time the Tenant planned on vacating the rental unit on that day. She stated that at that time the Tenant asked her for money for the Tenant to move out. She offered the Tenant, \$1,000.00 but that was not enough for the Tenant, and they asked for more, which she declined.
28. She further testified that from the time she received the N9 notice of termination up to the date the tenancy was supposed to terminate being June 30, 2023, she had no reason to believe the Tenant was not planning to vacate the rental unit. She testified that she received a text message from the Tenant on June 29, 2023, that advised the Landlords that the last month rent deposit being held by the Landlords should be applied to June 2023 rent owing.
29. After the text message from June 29, 2023, the Landlord testified that she received another text message from the Tenant asking for an extension to July 31, 2023, as they had not found a rental unit and they would pay rent for July 2023. She stated that she did not accept this extension as she had another agreement with a tenant to occupy the rental unit as of July 1, 2023, as she had no reason to believe the Tenant was not vacating on June 30, 2023.
30. She stated that the lease agreement signed by the new tenants was to commence on July 1, 2023. This lease included all new tenants under one tenancy agreement for the entire condo unit, including the Tenant's room, being the rental unit.
31. In this case the Landlords relied on the N9 notice of termination signed by the Tenant on April 6, 2023, with a termination date of June 30, 2023. The Landlords have no obligation to cancel the N9 or extend the termination date on the notice. This can be done by mutual agreement between the parties, which in this case did not take place. It is also reasonable for the Landlords to make plans for the rental unit after the Tenant vacates on June 30, 2023.
32. On cross examination, the Landlord, Maria Norma Jimenez Kaiser testified that she had communications with the Tenant where she asked the Tenant to move out as she was

having ongoing issues between the Tenant and another tenant in the unit. She stated that she also asked the other tenant to move out for the same reason and was trying to keep the peace inside the unit. She did not file an application with the Board regarding the Tenant and other tenants' behaviour for termination of tenancy as she expected that after she sent this message that the behaviour of the Tenant and the other tenant would improve.

33. I find the Tenants position to have little merit. Courts and tribunals typically hold people to their agreements. The Board has an obligation to uphold and enforce agreements negotiated in good faith and entered into voluntarily, absent compelling circumstances supporting reconsideration and where enforcement would lead to an injustice. Not enforcing agreements would also invite disrespect for the Board's hearing processes.
34. There are exceptions to the rule that parties are bound by the deals they negotiate. A contract may be set aside where one party agrees to it under duress, by fraud or by misrepresentation, or because the agreement is unconscionable. That is not the situation before the Board.
35. While parties may subsequently and mutually agree to cancel an N9, there was no evidence before me that would suggest that the Landlords agreed to have the N9 notice of termination cancelled or extended.
36. Further, on the date the tenancy was to terminate the Tenant requested money from the Landlords for the Tenant to move out. The Landlords offered the Tenant the amount of \$1,000.00 which the Tenant declined and requested the amount of \$5,000.00 to move out. I find this to be an ultimatum, and that the Tenant would have vacated the rental unit on that date if the Landlords provided the Tenant with the amount of \$5,000.00.
37. There is no dispute that there was communication between the Landlords and the Tenant where the Landlords asked the Tenant to move out of the rental unit as there was friction between the Tenant and other tenants. The Landlords also asked the other tenant to move out of the rental unit as well. I do not find this to be threatening in nature but rather the start of communications between the parties to rectify an issue between the Tenant and other tenants.
38. The simple act of having communications with the Tenant to vacate the rental unit because of ongoing issues with the Tenant and another tenant does not establish that the N9 notice was signed under duress, fraud or misrepresentation. The Tenant voluntarily signed an N9 notice of termination with a termination date of June 30, 2023.
39. Further, the Tenant testified that they had alternate accommodations to move to and it was only days before the termination date being June 30, 2023, that this fell through. This leads me to believe that the Tenant had plans of vacating the rental unit as they had secured a place to move to. It wasn't until the Tenant realized that the new rental unit had fallen through that they refused to terminate the tenancy on June 30, 2023.
40. On the basis of the evidence and submissions before the Board, I find that it would be unfair to the Landlords to set aside the eviction order.

41. The stay of order LTB-L-052014-23 is lifted on April 30, 2024. In all of the circumstances, I find it would not be unfair to delay the lifting of the stay to April 30, 2024. The Tenant currently does not have a source of income and there is a matter before another Tribunal regarding the Tenant's Ontario Works subsidy. The Tenant also has an open file with Service Canada regarding a disability credit. The Tenant has also been applying for jobs and requires access to phone and internet for interviews. The Tenant has a medical condition that impacts his sleeping patterns, and the cold weather also impacts the medical condition. The delay of lifting of the stay will give the Tenant some additional time to secure and make arrangements for alternative housing that will meet the Tenants needs and provide the Tenant with more time to work with the appropriate authority regarding his financial circumstances. I have also taken into consideration the financial impact on the Landlords. The Landlord's Legal Representative stated at the hearing that given the circumstances of the Tenant, it would not be unfair to delay of the lifting of the stay for sixty days.

It is ordered that:

1. The motion to set aside Order LTB-L-052014-23, issued on July 17, 2023, is denied.
2. The stay of Order, LTB-L-052014-23, is lifted on April 30, 2024.
3. Order LTB-L-052014-23 is unchanged.

February 27, 2024
Date Issued



Trish Carson
Member, Landlord and Tenant Board

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