



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

Citation: Rinella v Scarlett, 2024 ONLTB 16086

Date: 2024-03-27

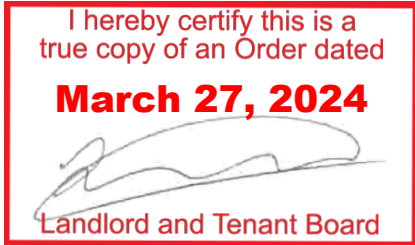
File Number: LTB-L-093566-23-SA

In the matter of: 1106, 120 Parliament Street
Toronto ON M5A0N6

Between: Agostino Rinella

And

Angela Scarlett



Landlord

Tenant

Agostino Rinella (the 'Landlord') applied for an order to terminate the tenancy and evict Angela Scarlett (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-093566-23, issued on November 30, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-093566-23. The motion was heard by videoconference on January 30, 2024. The Landlord and the Tenant attended the hearing. The Landlord's mother, Rose Rinella ('RR') attended the hearing as a witness for the Landlord.

Determinations:

1. As explained in greater detail below, the Tenant's motion is denied, and the stay of order LTB-L-093566-23 shall be lifted on April 15, 2024.

The parties agreed to terminate the tenancy

2. On October 23, 2023 the Landlord attended at the rental unit with his mother, RR. After 15-30 minutes the Tenant let the Landlord into the rental unit.
3. The Tenant was not in the best state of mind when the Landlord arrived. She had recently lost the majority of her income, and three people close to her passed away.
4. On October 23, 2023 the parties discussed an issue with the fire alarm. They also discussed the Tenant's non-payment of rent and non-payment of utilities. They then verbally agreed to terminate the tenancy. The Landlord left the unit and returned with an N11 form and the parties signed the N11 with a termination date of November 30, 2023.
5. The Tenant didn't move out of the rental unit, and the Landlord filed an application with the LTB based on the N11 agreement and obtained an *ex-parte* eviction order.
6. The Tenant brings this motion to set aside the eviction order. Her position is that the N11 is invalid because she signed it under duress while she was in a vulnerable state.

Evidence

Tenant's evidence

7. The Tenant testified about the events that took place on October 23, 2023.
8. The Tenant testified that she was in distress when the Landlord arrived.
9. The Tenant is a lawyer operating her own business. She was in financial stress because her overseas partners turned out to be unethical and she had to get rid of them and return their money. As a result, her bank account had a negative balance, and she was unable to pay her bills. Her Hydro was disconnected for non-payment as a result.
10. The Tenant also lost three people close to her. Her uncle, her mother-figure and her mother all passed away in quick succession. Whenever the Tenant would inform the Landlord of a loss in her family, the Landlord would not care and would just ask for his rent money. The Tenant therefore did not inform him of the death of her mother as she didn't think the Landlord would care.
11. On October 2023, the Tenant was suddenly disturbed when someone pounded on the door. She saw the Landlord, the Landlord's mother, a property manager and a security guard waiting at the door. The Tenant had just jumped out of the shower so she asked them for 30 minutes to get ready. They knocked again after 15 minutes, and the Tenant let them in because she was really nervous.
12. RR walked past the Tenant and entered the rental unit. The property manager told the Tenant not to charge her phone in the hallway using the building's electricity. The Tenant does not deny charging her phone in the hallway. She did so because her own Hydro was disconnected.
13. The Landlord put his hand on the Tenant's shoulder and said that they would work something out. Tears fell out of the Tenant's eyes because of embarrassment and emotion.
14. The parties discussed the Tenant's situation – her business, her family, the loss she had experienced, and non-payment of rent and utilities. The Landlord talked about a death in his family as well and that he had problems of his own. The Tenant then asked the Landlord if he just wanted her to move out of the rental unit. The Landlord agreed, left the rental unit, and returned with an N11 form. RR remained in the unit in the meantime.
15. The Tenant's testimony was that she signed the N11 because she was in grief and because she just wanted the Landlord and his mother to leave. As the Landlord was leaving, he embraced the Tenant despite the Tenant putting her arm up as a barrier. The Tenant didn't think they had the type of relationship that would include an embrace.
16. The Tenant eventually reached out to the Landlord and tried to take the N11 back. She told the Landlord that she wasn't in the right state of mind on October 23, and offered a payment plan for the arrears of rent. The Landlord offered to sign a new N11 with a different date. The Tenant said that she wouldn't be comfortable meeting with him again unless it was at a neutral place, such as the property management office. She said she didn't feel safe with him alone and the Landlord got angry. The Landlord then filed an L3 application based on the original N11 the parties signed to evict the Tenant.

17. The Tenant also testified that she is going to counselling and diligently searching for clients. She reiterated that the motion should be granted because the Landlord didn't give notice of his intention to attend at the rental unit and that she was under duress to sign the N11.
18. The Tenant had conversations with an assistant property manager who knew the Tenant was in distress. That assistant property manager was not asked to attend the hearing as a witness.

RR's evidence

19. RR testified that she attended the rental unit with the Landlord because the Landlord and building management were worried about the Tenant. She was not responding to emails and the building management advised the Landlord that the Tenant had not used her fob for two weeks.
20. The Landlord notified the Tenant by email of their intention to attend on October 23 between 10am and noon. The stated purpose was to check the alarm system but it was also a wellness check.
21. On October 23rd the Landlord arrived with building management and security. The security guard did not pound on the door but knocked in a normal manner. After the Tenant asked for 30 minutes to get ready, everyone left and came back in 30 minutes.
22. Building management then told the Tenant that she was not allowed to use the building's Hydro to charge her phone. The Tenant seemed embarrassed and ashamed to RR.
23. RR walked into the rental unit and sat on the couch after the Tenant motioned towards the couch. RR admitted that she didn't take her shoes off which she later realized the Tenant was offended by. According to RR the Tenant also didn't like RR sitting quietly and letting the Landlord talk to the Tenant.
24. According to RR, the parties first discussed the fire alarm. They realized that it couldn't be fixed because there was no Hydro in the rental unit. The Landlord then wanted to talk about the rent owing. The Tenant asked "I guess you need your condo back"? The Landlord agreed and left for the management office to print off an N11 form. The Tenant asked for 1 month to move, which the Landlord agreed to. The Tenant then asked to extend the date to November 30th, the Landlord agreed, and the parties signed the N11.
25. The Landlord gave the Tenant a "distant hug" on his way out and RR saw a "look" on the Tenant's face. RR thought that the Landlord didn't mean any harm.
26. On cross-examination the Tenant challenged RR's decision to attend the rental unit alleging that RR was there for added pressure. RR denied this. RR's stated reason for attending was that she didn't want the Landlord alone with the female Tenant to avoid any allegations of impropriety.
27. RR was also questioned about her understanding of the Tenant's state of mind. RR denied that she thought the Tenant was unable to make decisions.

Landlord's evidence

28. The Landlord testified that he notified the Tenant of his intention to attend the rental unit by email on October 20, 2023. This email was submitted into evidence and the Tenant did not challenge its authenticity. In his email the Landlord advised the Tenant that he will be at the rental unit on October 23, 2023 to address the fire alarm issue. The email also referred to non-payment of Hydro, Hydro being disconnected, and advised the Tenant that the Landlord needs her to pay the outstanding rent.
29. The Landlord admits that his reason for attendance on October 23 was not just to discuss the fire alarm. He was also planning to discuss the arrears of rent and the non-payment of utilities. The Landlord notified the Tenant of this intention in his October 20th email.
30. The Landlord wanted to discuss what can be done and the Tenant asked whether he just wanted his condo back. The Landlord said that it would probably be the best option for everyone. He then asked for the Tenant to sign something because she had previously renegeed on her promises.
31. The Landlord then went to the management office to print out 2 copies of an N11 form. The parties initially agreed to termination on October 30 but then changed the termination date to November 30th on the Tenant's request. The Landlord understood that the Tenant offered to terminate the tenancy instead of offering to repay the arrears of rent.
32. The Landlord submits that he had no reason to believe that the Tenant didn't want to sign the N11. The Landlord submitted a copy of a text he received from the Tenant on October 25, 2023 – 2 days after the N11 was signed. The text from the Tenant reads:

"Hi Gus: I just sent a small amount to put towards the hydro until I get paid. More to come... Thank you for the grace you have shown me... Please forgive my demeanor the other day. I was overwhelmed with shame and embarrassment...I could not handle your kindness at the time. Thank you for not condemning me and for showing me compassion. It truly means so much to me. Truly.

Angela."

33. The Landlord then made a payment towards the Tenant's Hydro bill to have the Tenant's Hydro reconnected.
34. After the Tenant decided not to move out by the agreed upon date, the Landlord filed the L3 application this Motion is based on, and filed an L1 application to evict the Tenant for non-payment of rent. The L1 application has not yet been heard by the LTB.
35. On cross-examination the Landlord admitted that the fire alarm issue has been ongoing since Spring 2023. He also did not deny that the Tenant appeared to be in distress. He attributed the distress to non-payment of rent.
36. The Landlord was questioned about the conversations the parties had in November 2023. The Tenant asked whether he ever told her she could just rip up the N11 and he denied ever doing so.

Law and Analysis

37. The Tenant's position is that the tenancy should not be terminated because the N11 is invalid. She says that she was in distress and she signed the document under duress.
38. The Tenant brings this motion under s. 77(6) of the *Residential Tenancies Act, 2006* (the 'Act').
39. Under ss. 77(8)(a) of the Act, I must make an order setting aside the eviction order if I find that the parties did not agree to terminate the tenancy. Under ss. 77(8)(b) I must set aside the eviction order if I am satisfied, having regard to all the circumstances that it would not be unfair to do so.
40. Subsection 202(1)(b) of the Act provides guidance on making factual findings. That provision states that the LTB shall: "in making findings shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so, may disregard the outward form of a transaction or the separate corporate existence of participants; and may have regard to the pattern of activities relating to the residential complex or the rental unit."
41. The Divisional Court applied s. 202 of the Act in the context of an N11-based application in *Pinto v. Regan* (*Pinto v. Regan and White v. Regan*, 2021 ONSC 5502 (CanLII)). At paragraph 40 the Court found that the Board erred when it ordered termination of the tenancy:

Section 202 of the RTA imposed a statutory duty on the Member to determine questions of fact and to apply governing principles of law to ascertain the real substance of the transactions and activities regarding the rental units at issue, and the good faith of the parties to the N11. The Member did not consider all the evidence to determine the element of good faith on the part of the respondent other than making a passing reference in the Reasons. The Member did not take the totality of the evidence into account when he applied the substantive law. This amounted to an error of law.

42. Applying the principles outlined above, I find that the parties entered into a valid agreement to terminate the tenancy effective November 30, 2023.
43. I accept the Tenant's testimony that she was experiencing hardship when she met with the Landlord on October 23, 2023.
44. I am unable to find, however, that the Landlord exerted pressure or otherwise did not act in good faith. The Landlord notified the Tenant of his intention to attend the rental unit on October 20th and the email put the Tenant on notice that the Landlord was concerned about non-payment of rent and utilities.
45. All parties agreed that the Tenant was the first to ask whether the Landlord wanted his rental unit back. It is also undisputed that the termination date was changed from October 30th to November 30th, indicating that the parties engaged in a negotiation and the Tenant was not simply forced to accept the Landlord's terms.

46. In the text message the Tenant sent the Landlord on October 25th, 2023, the Tenant is clearly grateful for the deal the parties reached, and there is no indication that the Tenant even regretted agreeing to sign the N11, let alone was pressured into signing it. This text was sent two days after the N11 was signed without any prompting from the Landlord.
47. The Tenant did not lead evidence that would establish that it is more likely than not that she was somehow incapable of making decisions and/or appreciating the consequences of her actions on October 23rd and on October 25th, 2023. She only made general references to her struggling and undergoing counselling. Her text message is inconsistent with her statement that she signed the N11 because she just wanted the Landlord to leave.
48. I find that the Tenant simply changed her mind about the deal and attempted to back out of it by negotiating with the Landlord and then by filing this Motion.

The surrounding circumstances

49. I find that it would be unfair to set aside the eviction order.
50. I find that it would be unfair to set aside the eviction order in all of the circumstances. The Tenant is a licensed lawyer who signed a binding agreement to terminate her tenancy. While I sympathize with the Tenant's circumstances, I find that she voluntarily entered into a legally binding agreement and understood that this tenancy was going to be terminated as a result. It would be unfair to the Landlord to invalidate this agreement to terminate this tenancy because the Tenant changed her mind. The Landlord would not have the ability to get out of this N11 if he changed his mind. The Tenant was very grateful for this agreement two days after she signed it.


The stay is lifted April 15, 2024

51. The stay of the eviction order is lifted effective April 15, 2024. The Tenant experienced hardship and I will not lift the stay of the order immediately. I am not inclined to delay the lifting of the stay any further given that the Tenant agreed to terminate this tenancy effective November 30 and already got to stay in the unit for 4 months past that date. The Tenant lives alone and does not have any dependants living with her. She will have just over two weeks to find a new place to live which I find to be appropriate in the circumstances.

It is ordered that:

1. The motion to set aside Order LTB-L-093566-23, issued on November 30, 2023, is denied.
2. The stay of Order LTB-L-093566-23, is lifted on April 15, 2024.
3. Order LTB-L-093566-23 is unchanged.

March 27, 2024
Date Issued



Vladimir Nikitin
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.