



Order under Section 31
Residential Tenancies Act, 2006

File Number: HOT-07352-20

In the matter of: 500 SEDGEBROOK WAY
STITTSVILLE ON K2S0M3

Between: Brandon Cashman Tenants
Robyn Pelletier

and

Angela Steele Landlord

Brandon Cashman and Robyn Pelletier (the 'Tenants') applied for an order determining that Angela Steele (the 'Landlord') harassed, obstructed, coerced, threatened or interfered with them.

This application was heard by videoconference on October 20, 2021. The Tenants, the Landlord and the Landlord's representative, Neelofar Haseeb, were present at the hearing.

Determinations:

T2 Application

1. On May 4, 2020, the Tenants filed a T2 application (T2) pursuant to s. 29(1) of the *Residential Tenancies Act, 2006* (the 'Act') seeking compensation for moving expenses, out of pocket expenses, a difference in rent, and a fine for the Landlord as a result of the Landlord's alleged use of harassment and coercion in having the Tenants sign an N11 Agreement to End the Tenancy (N11). I am satisfied that this allegation can be considered as it occurred less than one year before the application was filed, pursuant to s. 29(2) of the Act.

Background

2. The Tenants moved into the rental unit on July 1, 2019 with a one-year fixed term lease expiring July 1, 2020. The monthly rent was \$1600.00. The Tenants signed an N11 on March 2, 2020 and vacated the rental unit on March 31, 2020.
3. The Tenants are currently paying \$200.00 more per month in rent compared to the rent they paid at 500 Sedgebrook Way. They seek compensation for this difference in rent for a period of 12 months from April 1, 2020 to March 31, 2021 – for a total of \$2400.00. The Tenants also seek compensation for moving expenses totalling \$373.87, and for out of pocket expenses totalling \$2820.00. The Tenants also request that the Landlord be ordered to pay a fine to the Board.

4. Harassment and Coercion – Signing the N11

Tenants' Evidence

5. The Tenants testified to the following timeline of events with respect to their tenancy:

- a) January 22, 2020 – the Landlord advised the Tenants that the rental unit is listed for sale and that the potential buyers planned to occupy the unit;
- b) February 17, 2020 – offer was made on the rental unit with a closing date of May 1, 2020, and the Landlord advised the Tenants that the purchasers would be using the property for their own use;
- c) February 24, 2020 – Tenants found a new rental unit and advised the Landlord that they could vacate the current rental unit before the lease end date of July 1, 2020;
- d) February 29, 2020 – the Tenants received an N11 from the Landlord, and the Landlord requested their signature, even though they believed the Landlord was forwarding an N12;
- e) March 2, 2020 – the Tenants signed the N11;
- f) March 28, 2020 – the Landlord advised the Tenants that the purchaser planned to use the rental unit for the purchaser's own use, and the Tenants came to the realization that they should have been served an N12 rather than sign an N11;
- g) March 31, 2020 – Tenants vacated the rental unit;
- h) April 22, 2020 – the Tenants were advised that the rental unit was listed for rent at \$1850.00 monthly - \$250.00 more per month in rent than they had paid;
- i) April 24, 2020 – the Tenant's mother visited the rental unit, talked to the purchaser, and received information from the purchaser that he bought the property for investment purposes;
- j) April 24, 2020 – the Tenants called the Landlord and were upset that the purchaser had no plans to use the rental unit for his own use, as they had been led to believe; and
- k) May 1, 2020 – was the rental unit completion date for the transfer of ownership to the purchaser.

6. The Tenants provided numerous text message photographs supporting their timeline of events listed in paragraph 5. The Tenants testified further that they would not have signed the N11 had they been aware of the purchaser's true intention of using the rental unit as a rental investment property, rather than using it for his own use. The Tenants contend that the Landlord was aware of the purchaser's intention to rent the unit but was motivated to have the Tenants sign the N11 to ensure the expeditious sale of her property.

Landlord's Evidence

7. The Landlord agreed with the Tenants' timeline of events; however, she provided additional information regarding the sale of her property and her coordination with the Tenants. She testified that in the Agreement of Purchase and Sale (APS) that she signed with the purchaser on February 17, 2020, provided as evidence, the purchaser agreed to using the rental property for his own use, and if the Tenants failed to vacate the property, to assume the existing tenancy with the Tenants. The Landlord testified that this is the reason she advised the Tenants that the purchaser planned to use the rental unit for his own use. The Landlord stated that the purchaser wanted a completion date of end April

2020, but that the Tenants asked for a termination date of June 30, 2020. She also provided the Tenants with a reference letter to assist them with securing alternate accommodation. On February 24, 2020, after the Tenants advised the Landlord that they had found a new rental unit, they subsequently requested a new tenancy termination date of March 31, 2020. The Landlord stated that the APS completion date was then amended to May 1, 2020 – closer to the purchaser's preferred date.

8. The Landlord testified that after seeking legal advice she presented the N11 to the Tenants on February 29, 2020 - given that the Tenants had secured a new rental unit and appeared eager to proceed with the move and terminate their tenancy. She noted that she left the date of termination blank on the N11 for the Tenants' choice. The Landlord stated that the Tenants signed the N11 two days later on March 2, 2020, and that at no time did she harass, coerce or try to deceive the Tenants into signing the N11.
9. She noted that she believed all was well until the Tenants contacted her on March 28, 2020 stating that they should have been served an N12 rather than having signed an N11. The Landlord stated that she recommended the Tenants seek legal counsel; however, to her knowledge, they did not. The Landlord testified further that on April 24, 2020, the Tenants called her, and were upset that the purchaser was listing the rental unit for rent rather than using it for his own use. She advised the Tenants that she did not know the purchasers, or their current intentions, and was not aware they were listing her property for rent – a property that they currently did not own and would not own until May 1, 2020.

Analysis


10. Section 23 of the Act states: "A landlord shall not harass, obstruct, coerce, threaten or interfere with a tenant".
11. While there is no definition of "harassment" in the Act, it is generally held that "harassment" is a course of conduct that a reasonable person knows or ought to know would be unwelcome. Similarly, "coercion" is not defined in the Act, but it is commonly defined as the practice of persuading someone to do something by using force or threats.
12. For the reasons set out below, I find that the Landlord did not harass or coerce the Tenants into signing an N11 to terminate their tenancy, and thus she did not breach her obligations with respect to s. 23 of the Act.
13. On the basis of the Tenants' evidence and the Landlord's evidence, I am satisfied that the Tenants signed the N11 on March 2, 2020 with an incomplete knowledge of their rights as Tenants, and based on the Landlord's statement that the purchaser would be using the rental unit for his own use. I am also satisfied that the Landlord, in good faith, relayed in a timely fashion the information she had regarding the purchaser's intentions, to the Tenants, for their use in determining how to manage their tenancy. I accept that the Landlord, on the basis of her testimony, text messages and signed APS, had no additional information or insight regarding the purchaser's actual intentions with respect to the rental unit. Furthermore, I accept that the Landlord only became aware of the purchaser's intent to rent the rental unit on April 24, 2020, when advised by the Tenants.

14. During the sale of the rental unit, the Landlord relayed information promptly to the Tenants, negotiated APS completion dates suitable to the Tenants, provided the Tenants with a reference letter, and based on legal advice, presented an N11 to the Tenants for their consideration to accommodate their requested termination date. I find that the Landlord should have served the Tenants with an N12, rather than an N11, after signing the APS with the purchaser, regardless of the purchaser's intention with respect to his use of the rental unit. However, I am satisfied that the Landlord acted in good faith and honestly presented the N11 to the Tenants upon the recommendation of her legal counsel, without intended prejudice to the Tenants, without malice, and with regards to the interests of the Tenants at the end of February 2020.
15. The Tenants had the opportunity to seek legal advice before signing the N11, and no evidence was presented to suggest that the Landlord's conduct placed the Tenants under duress, and thus unable to seek this legal advice. When the Tenants expressed concerns about the N11 several weeks after signing it, the Landlord suggested they seek legal counsel. I therefore find that the Landlord's conduct in this matter cannot reasonably be considered unwelcome, forceful, threatening or deceitful.
16. As the Tenants have not established that the Landlord harassed, coerced or threatened the Tenants into signing an N11 to terminate their tenancy, the Tenants' application must be denied.

It is ordered that:

1. The Tenants' application is dismissed.

November 12, 2021
Date Issued



Frank Ebner
Member, Landlord and Tenant Board

Eastern-RO
255 Albert Street, 4th Floor
Ottawa ON K1P6A9

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