



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

Citation: 1000085600 Ontario Ltd v Fuller, 2024 ONLTB 21662

Date: 2024-03-28 **File Number:**
LTB-L-037658-23-SA

In the matter of: #9, 2866 KEELE ST NORTH
YORK ON M3M2G8

Between: 1000085600 Ontario Ltd Landlord

And

Fernando Fuller Tenant

1000085600 Ontario Ltd (the 'Landlord') applied for an order to terminate the tenancy and evict Fernando Fuller (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-037658-23, issued on May 29, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-037658-23.

The motion was heard by videoconference on November 15, 2023 and February 27, 2024.

The Landlord's Legal Representative, C. Cheung, the Landlord, and the Tenant attended the hearings. E. Wang, an interpreter, provided translation between English and Mandarin for the Landlord at both hearings.

Determinations:

1. Based on the evidence before me, I was satisfied that the Agreement to Terminate (form N11) signed by the parties is void.
2. Subsection 37(5) of the *Residential Tenancies Act, 2006* (the 'Act') states:

An agreement between a landlord and tenant to terminate a tenancy is void if it is entered into,

(a) at the time the tenancy agreement is entered into; or

(b) as a condition of entering into the tenancy agreement.

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3. The Landlord stated that she was negotiating a lease with the Tenant after his father, who was the former tenant, passed away. She stated that before they signed the lease, they had discussions about parking and utilities, but the Tenant did not want to pay the additional \$300.00 fee for the parking garage. So the parking garage was not included in the lease agreement. A copy of the Residential Tenancy Agreement (Standard Form of Lease) (the 'Lease') was provided into evidence by the Landlord.
4. The Landlord also stated that the Tenant stated that if he had to pay the garage fee and utilities it would be more than \$2,000.00 and he would be able to find a larger unit for that amount. The Landlord stated that because of this assertion, she agreed for him to move out and if he met the timeline, she would not charge him the garage fee.
5. The Tenant stated that shortly after signing the Lease in April 2022, the Landlord called him and said that he forgot to sign a form. The Tenant stated that the Landlord attended his unit on May 25, 2022 and he signed where she directed him to sign. The Tenant did not dispute that he received a copy of this form shortly thereafter under his door, which turned out to be the N11 form and he just put it with his Lease documents.
6. There was no dispute that the parties signed the Lease on April 23, 2022 and the N11 form on May 25, 2022. While although these documents were not signed on the same date, based on the Landlord's evidence, I was satisfied that the N11 form was a condition of the Lease. The Landlord essentially confirmed in her testimony that since the Tenant was not willing to pay the additional garage fee, she agreed to waive it for a period of time provided the Tenant agreed to terminate the tenancy. There was no dispute that the garage fee was not included in the Lease.
7. As well, the N11 form signed by the parties on May 25, 2022 stated a termination date of April 30, 2023, approximately one year later. Given this extended timeframe, I also find it more likely than not that the N11 form if not conditional on the Lease, was negotiated at the same time as the Lease. The Lease commencement date was May 1, 2022.
8. As per subsection 37(5) of the Act, any agreement between a landlord and tenant to terminate a tenancy is void if entered into at the time a tenancy agreement is entered into or as a condition of a tenancy agreement. The evidence before me and the timing of the N11 form supports a finding on a balance of probabilities that it was entered into as a condition of the tenancy agreement and/or was negotiated at the same time as the Lease.
9. Therefore, I find that the parties N11 form is void. Consequently, the Landlord's application is dismissed.

It is ordered that:

1. The motion to set aside Order LTB-L-037658-23, issued on May 29, 2023, is granted.
2. Order LTB-L-037658-23, issued on May 29, 2023, is set aside and cannot be enforced.

March 28, 2024

Date Issued

Lisa Del Vecchio

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.