



Order under Section 77 Residential Tenancies Act, 2006

Citation: Rahman v Green, 2024 ONLTB 8606

Date: 2024-01-26 **File**

Number: LTB-L-040253-23

2024 ONLTB 8606 (CanLII)

In the matter of: 1602, 220 BURNHAMTHORPE RD W MISSISSAUGA
ON L5B4N4

Between: Susahosh Rahman Landlord

And

Annakay Green Tenant

Susahosh Rahman (the 'Landlord') applied for an order to terminate the tenancy and evict Annakay Green (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

This application was resolved by order LTB-L-040253-23, issued on June 9, 2023. The order was issued without a hearing being held.

On June 16, 2023, the Tenant filed a motion to set aside the order issued on June 9, 2023.

The motion was heard by videoconference on September 11, 2023.

The Landlord, the Landlord's Legal Representative, Lewis Waring, and the Tenant attended the hearing. The Tenant declined the opportunity to speak to Tenant Duty Counsel prior to the hearing.

Determinations:

Background

1. The rental unit is a condominium owned by the Landlord. The Tenant moved into the rental unit on May 15, 2021.
2. It is uncontested that on May 3, 2023 the Landlord and the Tenant signed an N11

Agreement to End the Tenancy ('N11 Form') with a termination date of September 30, 2023. Although the Tenant stated the signing date should be May 4, 2023. The N11 Form does not show the date corrected by the Tenant however the signing date does not negate the N11.

3. The Tenant did not move out of the rental unit by the date specified in the N11 Form and was living in the rental unit as of the hearing date.
4. The Landlord filed an L3 application with the Board to terminate the tenancy based on the N11 Form. The Board subsequently issued order LTB-L-040253-23 on June 9, 2023, terminating the tenancy on September 30, 2023.

Issue in Dispute

5. The Tenant brings this motion under subsection 77(6) of the *Residential Tenancies Act, 2006* ('the Act'). In accordance with subsection 77(8) of the Act, the first task for the Board on a motion like this one is to determine whether or not the parties entered into an agreement to terminate the tenancy.
6. There is no dispute here that the Tenant *signed* the N11 Form on or about May 3, 2023. Rather, the Tenant argues that there was not actual agreement because the Landlord coerced her to sign the agreement and because the Tenant was intoxicated at the time, vitiating her consent.

Circumstances of the Agreement

Tenant's evidence

7. In her testimony, the Tenant stated the Landlord came to the unit with his sister to discuss her tenancy. She stated the Landlord advised her he was having financial difficulties and needed to move into the unit with his family. She stated he presented her with the N11 Form and because she had been drinking, she asked the Landlord to leave it with her but she wanted the termination date changed. She added the Landlord and his sister refused to leave until the N11 Form was signed and were in the unit for approximately two hours.
8. In cross-examination, the Tenant testified she had a friend with her in the unit and conceded that she had drunk a 750ml bottle of wine before the Landlord arrived. She testified her friend advised her not to sign the N11 Form but she signed it anyway. She testified that the Landlord showed up at the unit without prior notice and did not leave when she asked him to. She stated she should have taken some time to think about but signed the N11 Form anyway.

Landlord's evidence

9. In his testimony, the Landlord stated that in April 2023, the mortgage for the rental unit was up for renewal and because of the increased interest rates, he was unable to continue

keep up the monthly costs of the unit. He stated he approached the Tenant to advise her of the situation and she offered to buy the unit. As the Tenant was unable to provide a definitive answer with respect to the purchase, the Landlord decided to meet the Tenant to discuss he need to move into the unit. He stated he is currently a tenant himself and can no longer afford to pay his monthly rent and the new monthly mortgage payment for the rental unit.

10. The Landlord testified the meeting with the Tenant on May 4, 2023 was cordial. He stated the Tenant did not seem intoxicated and the conversation they had was a good one. He stated he was in the unit for approximately thirty-five minutes. He further testified the Tenant took a couple of minutes to review the N11 Form and they both signed it at the same time. He offered to email a copy of the signed N11 Form to the Tenant to which she agreed.
11. The Landlord's representative submitted an audio recording of the meeting between the Landlord and the Tenant as evidence. In the recording, the conversation is cordial. The Landlord and the Tenant discuss a mutual termination date of September 30, 2023 and the Landlord offered to cover the costs of a real estate agent to assist the Tenant in finding a new home. The Tenant stated she has been thinking about moving but because of the current circumstances, she has not been concentrating on looking. The Tenant reviewed the N11 Form and signed it. The recording is 35:06 minutes long.

Intoxication of the Tenant when signing the N11 Form

12. After listening to the Landlord's audio recording during my deliberations and considering the evidence, I am not persuaded that the Tenant was intoxicated and not of sound mind when she signed the N11 Form. The Tenant is heard having a friendly conversation with the Landlord and at no time did she express any concern or disagreement with the Landlord.
13. It is a well-established principle of law that a contact of an intoxicated person can be set aside for lack of consent if the person was incapable of understanding what they were doing and if the other party was aware of the intoxication, *Williams v. Condon*, 2007 CanLII 14925 (ON SC).
14. I did not find the Tenant to be as credible as the Landlord. This was because her version of the events was quite different from that of what was recorded on May 4, 2023.

Coercion/Duress

15. I am also not persuaded that that Tenant was coerced into signing the N11 Form or that she signed the agreement under duress.
16. As stated above, the audio recording is clear that the conversation was friendly. At times, the parties can be heard laughing and the Tenant did not raise any issues with the Landlord about signing the N11 Form.

17. I also note that duress, by its legal definition, generally involves inducement by way of unlawful threats. Even if I were to accept the Tenant's testimony at face value, I find that she has not established that she was under duress at the time she signed the agreement. The Tenant did not present any evidence that the Landlord made any threats in order to induce her to sign the N11 Form. I find that the Tenant failed to demonstrate, on a balance of probabilities, that she was induced to sign the agreement by coercion or duress, or that she did not understand what she was signing.
18. I have considered all of the evidence presented at the hearing and all of the oral testimony and although I may not have referred to each piece of evidence individually or referenced all of the testimony, I have considered it when making my determinations.

Section 78(11) (b)

19. I turn now to whether it would be unfair to set aside the *ex parte* order.
20. The Tenant testified that she is no longer comfortable with the Landlord and requested that she be given an additional 60 days to vacate the rental unit.
21. The Landlord's representative submitted the Tenant was given four months to vacate the unit from the time of signing the N11 Form and providing the Tenant will more time would be highly prejudicial to the Landlord.
22. Having considered all of the evidence, I find that it would be unfair to set aside the order. I find that the agreement was entered into voluntarily and that the Landlord entered into the agreement in good faith because he needs to move into the rental unit. The Tenant was initially supposed to vacate on September 30, 2023 and was provided with four months notice to do so. To deny the Landlord the benefit of the agreement now would be unfair and as such, I do not find postponing the termination of the tenancy warranted. As a result, the stay of order LTB-L-040253-23 will be lifted immediately.

It is ordered that:

1. The motion to set aside Order LTB-L-040253-23, issued on June 9, 2023, is denied.
2. Order LTB-L-040253-23, issued on June 9, 2023, remains unchanged.
3. The stay of Order LTB-L-040253-23 is lifted immediately.

January 26, 2024

Date Issued

Susan Priest

Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

File Number: LTB-L-040253-23

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