



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

Citation: Indwell v Zimmer, 2024 ONLTB 2241

Date: 2024-01-04 **File Number:**
LTB-L-054397-23-SA

In the matter of: 310, 41 Norfolk Street South Simcoe
ON N3Y0H1

Between: Indwell Landlord

And

Paul Zimmer Tenant

Indwell (the 'Landlord') applied for an order to terminate the tenancy and evict Paul Zimmer (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-054397-23, issued on July 21, 2023. This order was issued without a hearing being held. The Tenant filed a motion to set aside the ex-parte order.

The motion was heard by videoconference on September 21, 2023. The Landlord's agents Shelby Vosburgh and Jean Montgomery, the Tenant and the Tenant's legal representative Ayesha Noorani attended the hearing.

Determinations:

1. The order issued on July 21, 2023 terminates the tenancy as the Board was satisfied that the parties entered into an agreement to terminate the tenancy effective July 7, 2023.
2. The rental unit is located in a multi residential and supportive housing complex.

Tenant's evidence:

3. The Tenant does not dispute signing the N11 agreement on June 22, 2023, but argues that he was not in the right state of mind at the time of signing the N11 notice and that he did not fully understand the contents of the agreement.

4. The Tenant is 66 years old and has resided in the rental unit since August 2022. The Tenant is on a fixed income which is received through ODSP and CPP.
5. The Tenant testified that on June 22, 2023, employees of the Landlord came to his rental unit and asked him to meet with them in the computer room of the residential complex. The Tenant agreed to the Landlord's request for a meeting, which lasted approximately 510 minutes.
6. During the meeting the Tenant was handed a N11 agreement to terminate his tenancy. The Tenant stated that the agreement was already filled out and completed prior to the being shown or explained and that all he had to do was sign the notice.
7. The Tenant testified that on the date of signing the agreement he was on painkillers for approximately two days and as such was feeling drowsy throughout the day. The Tenant did not obtain legal advice prior to signing the N11 form and stated that he did not fully understand the context of the agreement.
8. Approximately two days after the agreement was signed (June 24, 2022) an employee of the Landlord mentioned the agreement to terminate to the tenancy. The Tenant advised the Landlord that he wished to undo the agreement, but was advised that it was too late to renegotiate the agreement.
9. The Tenant stated that an eviction would have a negative impact on his mental health and ability to secure adequate housing.

Landlord's evidence:

10. The Landlord takes the position that the Tenant fully understood the agreement they signed and that the Tenant showed no signs of being drowsy during their meeting.
11. The Landlord does not dispute that they asked the Tenant to have a meeting with them to discuss terminating the tenancy and stated that the discussions were initiated because of the Tenant's conduct in the residential complex. The Landlord agrees that on or about the same day the N11 was signed that the Tenant was also served with a N7 notice of termination alleging that the Tenant and/or their guest seriously impaired the safety of another person within the residential complex.
12. The Landlord agrees that the Tenant was not given an opportunity to seek legal advice prior to the meeting, but stated that they offered to assist the Tenant in finding a new rental unit. The Landlord also agreed that the Tenant is a vulnerable person who requires supportive resources.
13. The Landlord uploaded to the Tribunals Ontario Portal (TOP) video footage taken from their security camera in the room where the meeting took place. The video is several minutes long and contains no audio. In the video however, two of the Landlord's agents can be seen speaking to the Tenant and subsequently hand him the N11 notice, to which the Tenant signed and returned.

14. The Landlord confirmed that as of the hearing date, the rental unit had not yet been re-rented.

Analysis:

15. Subsection 77(8)(b) of the Act states that the Board make an order setting aside an ex parte order issued based on a L3 application, if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so.
16. Section 202 of the Act states:
 - 202** (1) In making findings on an application, the Board 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,
 - (a) may disregard the outward form of a transaction or the separate corporate existence of participants; and
 - (b) may have regard to the pattern of activities relating to the residential complex or the rental unit.
17. Based on the evidence before the Board, I find that it would not be unfair to grant the Tenant's motion and set aside the ex-parte order issued on July 21, 2023.
18. There is no dispute that the parties signed an N11 agreement to terminate the tenancy. However, pursuant to section 202 of the Act, the Board must look beyond the mere agreement signed between the parties and consider the overall intention and conduct of the parties when the agreement was entered into. This consideration is confirmed by the Ontario Divisional Court in *Pinto v. Regan and White v. Regan, 2021 ONSC 5502* (Pinto).
19. The evidence before the Board is clear that the Landlord initiated discussions with the Tenant to terminate the tenancy because of alleged conduct that occurred in the residential complex. During this time, the Landlord also served the Tenant with an N7 notice of termination and required that the Tenant meet with the Landlord's staff immediately following the service of the N7 notice.
20. The Tenant was not given an opportunity to obtain legal advice prior to discussing the agreement to terminate the tenancy and the video evidence submitted by the Landlord suggests that the Landlord had the agreement to terminate filled out and completed prior to the Tenant having an opportunity to review and/ or fully understand the consequences of the agreement. I further note that the evidence suggests that the Tenant is a vulnerable person who suffers from a disability.
21. I find that the Tenant was put in a situation where he felt he had no other choice but to sign the N11 agreement and that the Landlord initiated the meeting to terminate the tenancy to avoid having to proceed to a hearing on an application to support their N7 notice served to

the Tenant. The evidence is clear that the Tenant had no intention of terminating their tenancy prior to the Landlord's staff requesting that they meet with them and that the Tenant was only given approximately 10 minutes to make a decision with respect to his tenancy terminating.

22. I further note that even if I am incorrect in my analysis above, that I would still find that it would not be unfair to set aside the ex-parte order. As of the hearing date, the Landlord confirmed that the unit had not been re-rented to another tenant and that the Tenant has continued to pay his lawful rent in full each month since the ex-parte order was issued. As such, the Landlord has not established that it would be unfair to grant the Tenant's motion and for the tenancy to continue.

23. This Order contains all the reasons for this matter. No further reasons will issue.

It is ordered that:

1. The motion to set aside Order LTB-L-054397-23, issued on July 21, 2023, is granted.
2. Order LTB-L-054397-23, issued on July 21, 2023, is set aside and cannot be enforced by the Landlord.

January 4, 2024
Date Issued

Fabio Quattrociocchi
Member, Landlord and Tenant Board

15 Grosvenor Street, Ground Floor Toronto
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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.