



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

Citation: Vamvakas v Sakar, 2024 ONLTB 4717

Date: 2024-01-19 **File Number:**
LTB-L-055380-23-SA

In the matter of: 413 Margueretta St
Toronto ON M6H3S6

Between: Roula Vamvakas Landlord

And

Nuri Sakar Tenant

Roula Vamvakas (the 'Landlord') applied for an order to terminate the tenancy and evict Nuri Sakar (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-055380-23, issued on July 24, 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 December 15, 2023. The Landlord attended the hearing and represented by John Andersen. The Tenant attended the hearing and was represented by Farida Salim.

The Landlord's daughter Nancy Vamvakas appeared as a witness for the Landlord. Kadriye Aboseyf provided Turkish language interpretation for the Tenant.

Determinations:

1. The ex-parte order issued on July 24, 2023 terminates the tenancy effective August 4, 2023 as the Board was satisfied that the parties entered into an agreement to terminate the tenancy.
2. The agreement to terminate the tenancy was signed on May 1, 2023 with a termination date of June 30, 2023.

Tenant's evidence:

3. The Tenant has resided in the rental unit approximately 23 years and is 61 years of age. The Tenant is not fluent in English and often requires a Turkish interpreter when communicating in English.
4. The Tenant does not dispute signing the agreement to terminate his tenancy, but states that he did so under duress.

5. The Tenant testified that prior to May 1, 2023 he received several phone calls from the Landlord's daughter (Nancy Vamvakas) advising that the Landlord was going to sell the rental property and that he had to vacate immediately.
6. On May 1, 2023 the Landlord's daughter attended the rental unit with the agreement to terminate the tenancy already completed and that all the Tenant had to do was sign above his name. The Tenant stated that he did not fully understand the contents of the agreement but felt pressured to sign. The agreement to terminate was written in a first-person perspective and states:

I, Nuri Sakar, will be vacating/moving out of my rental unit (located at 413 Margueretta St. Toronto, ON M6H 3S6) and removing all my belongings by June 30, 2023.

7. The Tenant is on a fixed income (ODSP) and stated that if evicted, it would be difficult to find new housing in the City of Toronto.

Landlord's evidence:

8. The Landlord does not dispute that she and her daughter approached the Tenant with respect to terminating the tenancy or that the Landlord had prepared the agreement in advance of the visit on May 1, 2023. The Landlord does dispute however that the Tenant was coerced into signing the agreement.
9. The Landlord's daughter testified that the Tenant was approached about terminating the tenancy as she requires the rental unit for her own personal use and because the Landlord no longer wishes to rent the property.
10. The Landlord agrees that no N12 notice of termination was served to the Tenant and provided no explanation as to why this notice was not served.
11. The Landlord's daughter also stated that the Landlord has attempted to work with the Tenant and assist in finding alternate housing. The Landlord has sent the Tenant multiple ads for rental units in the city, but the Tenant has refused to apply to any of these units.

Analysis:

12. Subsection 77(8)(b) of the Act states that the Board make an order setting aside an exparte order issued based on an agreement to terminate the tenancy, if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so.
13. 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.

14. 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 24, 2023.
15. There is no dispute that the parties signed an agreement to terminate the tenancy. However, pursuant to section 202 of the Act, the Board must look beyond the mere fact that an agreement was signed between the parties and consider the overall intention and conduct of the parties when the agreement was entered into.
16. In *Pinto v. Regan and White v. Regan, 2021 ONSC 5502* (Pinto), the Ontario Divisional Court found that the Board erred by not applying section 202 of the Act and analysing the true intentions of the parties when the agreement to terminate was signed.
17. The facts in *Pinto* are very similar to this proceeding. In *Pinto*, the landlord approached the tenants and required them to sign an N11 notice to terminate their tenancies for the purpose of conducting extensive repairs and renovations. The landlord did not serve the tenants with the require N13 notice of termination and the tenants were led to believe that they had no alternative but to sign the N11 and without regard to their rights under the Act.
18. In this case the evidence before the Board is clear that the Landlord initiated the agreement to terminate the tenancy because the Landlord's daughter required the rental unit for her own personal use. Although the agreement to terminate the tenancy appeared on it's face to be written by the Tenant, the parties at the hearing confirmed that the Landlord's daughter in fact drafted this letter, attended the rental unit and advised the Tenant that all he had to do was sign the letter.
19. The evidence is also clear that the Tenant was not given an opportunity to review the letter prior to May 1, 2023 or to obtain legal advice prior to signing the agreement. The Tenant is an individual who is not fluent in English and whose sole income is received through disability. As such, I accept the Tenant's testimony that he did not fully understand the contents of the agreement and would have benefited from having the letter reviewed by a translator or a member of his local legal aid clinic prior to signing.
20. Although the Act permits landlords to terminate tenancies for the own use of themselves or a member of their immediate family, an agreement to terminate the tenancy is not intended for that purpose. An application to terminate a tenancy for landlord's own use requires the landlord to serve the tenant with a notice of termination under section 48 of the Act, to compensate the tenant in an amount equal to one-month's rent or to offer the tenant another rental unit that is acceptable to the tenant and to swear an affidavit and/or declaration before the Board stating the landlord's intentions. This process also affords the tenant the right to challenge the good-faith intentions of the landlord or the person who requires the rental unit at a hearing before the Board.
21. It appears to me that the Landlord in this case drafted and had the Tenant sign the agreement to terminate the tenancy to avoid their obligation under the Act to serve the Tenant with a N12 notice, having to pay the required compensation and from having to prove their case to the Board on a balance of probabilities.

22. It is also clear that the Tenant had no intentions of terminating the tenancy prior to being presented with the agreement and that he had limited time to make a decision with respect to terminating his tenancy.
23. Thus, I find that the Landlord was not acting in good faith when they obtained the Tenant's signature on the agreement to terminate the tenancy.
24. I further note that it would not be unfair to set aside the ex-parte order issued as the Landlord will still have the option of proceeding with an application to terminate the tenancy providing the appropriate notice of termination is served for their daughter's own personal use.
25. 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-055380-23, issued on July 24, 2023, is granted. The Order is set aside and cannot be enforced.
2. The Landlord's L3 application is dismissed.

January 19, 2024

Date Issued

Fabio Quattrociochi

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.