



## **Order under Section 77 Residential Tenancies Act, 2006**

**Citation:** 14792670 CANADA INC. v Kellar-Parsons, 2023 ONLTB 78139

**Date:** 2023-12-04 **File**

**Number:** LTB-L-080392-23

**In the matter of:** 16, 30 CHARLES STREET EAST TORONTO  
ON M4Y1T1

**Between:** 14792670 CANADA INC. and Landlord  
KAMRAN KURU

**And**

HILARY KELLAR-PARSONS Tenant

14792670 CANADA INC. and KAMRAN KURU (the 'Landlord') applied for an order to terminate the tenancy and evict Hilary Kellar-Parsons (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

A hearing was held to consider this application.

This application was heard by videoconference on November 22, 2023.

The Landlord and the Landlord's legal representative Avi Khanna and the Tenant attended the hearing. The Tenant spoke with Tenant Duty Counsel prior to the hearing.

### **Preliminary Matter:**

Normally this type of application is considered by the Board on an *ex parte* basis. This matter was sent to a hearing by way of a Member Direction to determine who the named Tenants are in the application. The Landlord had submitted a schedule of parties that included two other persons who also signed a N11 form. Both the Landlord and the Tenant confirmed that the other two individuals' names were occupants of the rental unit

and not tenants. Therefore, I find that they should not be named as parties in this application.

**Determinations:**

1. There was no dispute that the parties signed a N11 agreement to terminate the tenancy. The Landlord and the Tenant entered into an agreement on July 18, 2023 to end the tenancy on September 30, 2023. There is also no dispute that the Tenant did not move out of the rental unit by the termination date set out in the agreement.
2. The Tenant submitted that she felt that she had no other option but to sign the N11 and have the roommates also sign. HKP testified that the N11 was a conditional upon the Landlord providing fobs for the roommates by July 20, 2023 and withdrawing a Landlord's application with the Board (A2).
3. The Tenant testified that since the Landlord breached his conditions of the N11 by not giving the roommates key fobs, this voided the N11. The Tenant testified that the fobs were given by the date specified however she stated that the fobs were not activated which resulted in the roommates not being able to enter the building. This caused a great deal of stress between the Tenants, the Tenants' roommates, and Landlord.
4. The Tenant testified that she was in Europe at the time and returned in September 2023.
5. The Tenant testified that when the fobs were not working for the roommates. The Tenant was desperate because the roommates couldn't enter the building. The Tenant testified that they did have access to the rental unit, just not the main doors of the residential complex. The N11 was signed as attempt to get the Landlord to provide the fobs.
6. The Tenant testified that the fobs were given but they were not working. The fobs were working after August 4, 2023 until October 12, 2023 and stated that the Landlord deactivated them when she did not move out.
7. The Landlord's legal representative stated that the N11 were signed, and that the Tenants were given fobs as of July 20, 2023 and provided documentary evidence to support this claim. The Landlord submitted email correspondence with the Tenant when the fobs were delivered and signed document by one of the roommates who received the fob. The Landlord also withdrew his A2 application as requested by the Tenant.
8. The Landlord testified that the key fobs were temporarily not working because the third-party company they hired to program the fobs were having difficulties with some of the fobs in the residential complex.

9. The Landlord stated that the Tenant sent an email on September 27, 2023 to the property management that the Tenant would not be vacating the rental unit by September 30, 2023, but will be vacant for the 5<sup>th</sup> of October, 2023. The Tenant did not dispute this.
10. The Landlord testified that on October 13, 2023 the Tenant emailed the Landlord stating that she will vacate by October 31, 2023 and will sign a N11 for November 1. The Tenant's email also demands that the Landlord refund the Tenant November's rent, that the Landlord drop all the demand letter, LTB filings, stop threatening the Tenant and that the Landlord contribute \$4000.00 towards relocation costs.
11. The Tenant did not dispute this and testified that she was willing to sign another N11 not to be sued.

## Law and Analysis

### Duress, coercion

12. Section 77 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord, may, without notice to the tenant, apply to the Board for an order terminating the tenancy and evicting the tenant if the landlord and tenant have entered an agreement to terminate the tenancy.
13. The issue before me is whether the agreement of July 18, 2023 between the parties is valid or whether it was entered into as a result of duress as claimed by the Tenant.
14. I note that duress, by its legal definition, generally involves inducement by way of unlawful threats or improperly persuasive conduct that must be applied to such a degree to amount to a 'coercion of the will'.
15. In this case, the Tenant carries the burden of proving her case on the balance of probabilities. I find the Tenant was unable to do so.
16. I do not find any evidence that the Tenant's correspondence or communications with the Landlord met the high threshold of coercion of the will. In my view, the Tenant was attempting to negotiate with the Landlord to obtain key fobs for the roommates so they can access the residential complex. The Landlord complied with the Tenant's requests by giving the key fobs and withdrawing their application with the Board in exchange for the N11.
17. Though it was clear that the Tenant and Landlord were having issues regarding the Landlord providing fobs to the Tenant's occupants to gain access to the residential complex, this does not change the fact the Tenant was the one who initiated the N11 form and signed it.

18. Furthermore, the Tenant attempted to negotiate again with the Landlord with an offer to sign yet another N11 to vacate by the end of October 2023 providing the Landlord drops all demand letters, LTB filings and contributes to her relocation costs. This is not the actions of someone who is under duress or being coerced.
19. In my view, the Tenant did not sign the N11 under duress. Though the Tenant may not have had legal advice prior to signing the N11, this does not change the fact that she initiated the N11 form to the Landlord and willingly signed it. She may have felt that this was her only option at the time, however the Tenant never provided evidence that she did not intend to move out. In fact, when examining the Tenant's documentary evidence, the Tenant in an email sent to the Landlord the Tenant tells the Landlord that she would not leave by September 30, 2023, but the rental unit would be vacant by October 5<sup>th</sup>, 2023.

### Section 83 considerations

20. The Tenant testified that she was in Europe from March 2023 to September 2023 staying with her boyfriend. Since returning home she has not been able to live in her rental unit because of the ceiling is caved in her rental unit and the rental unit is under construction. The Tenant spends her time between her boyfriend's and her mother's place until the unit is repaired. The Board has issued an interim order for an ongoing T2 application the Tenant has filed.
21. The Tenant testified that she can barely afford the rent and would like roommates to help pay the rent. The Tenant fears that she will not be able to find an affordable rental unit if she is evicted. Furthermore, when asked how much time she would require moving out, the Tenant testified that she does not know, it would depend on when the repairs to the rental unit would be done so she could access her belongings.
22. I have considered all the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act. The Tenant has places where she currently staying and delaying eviction would not change the outcome. There is an interim order in place by the Board where the Tenant has rights to access to her belongings.
23. I find the agreement to terminate the tenancy was entered into voluntarily and the Landlord complied with their part of the agreement. The Tenant was initially supposed to vacated on September 30, 2023. To deny the Landlord the benefit of the agreement now would be unfair.
24. Since the Tenant did not move out of the rental unit by the termination date, the Landlord was required to file the application to obtain vacant possession.

Therefore, the Tenant is responsible for paying the Landlord \$201.00 for the application filing fee incurred.

**It is ordered that:**

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before December 15, 2023.
2. If the unit is not vacated on or before December 15, 2023, then starting December 16, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. Upon receipt of this order, the Court Enforcement Office (Sheriff) is directed to give vacant possession of the unit to the Landlord on or after December 16, 2023.
4. The Tenant shall also pay to the Landlord \$201.00, for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before December 15, 2023, the Tenant will start to owe interest. This will be simple interest calculated from December 16, 2023 at 7.00% annually on the balance outstanding.

**December 4, 2023**

**Date Issued**

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Nicole Huneault

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 1-888-3323234.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on June 16, 2024 if the order has not been filed on or before this date with the Court Enforcement Office (Sheriff) that has territorial jurisdiction where the rental unit is located.

