



Order under Section 77 Residential Tenancies Act, 2006

Citation: Chen v Puvanenthiran, 2023 ONLTB 63540

Date: 2023-10-11

File Number: LTB-L-058676-23

In the matter of: 39 MAC FROST WAY
SCARBOROUGH ON M1X0C5

Between: Xiaoyin Chen Landlord

And

Bakeerathy Puvanenthiran Tenant

Xiaoyin Chen (the 'Landlord') applied for an order to terminate the tenancy and evict Bakeerathy Puvanenthiran (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 September 13, 2023.

The Landlord, the Landlord's Legal Representative Yun Tao Li, the Tenant and the Tenant's Legal Representative Thiru Sivapatham attended the hearing. The Landlord's spouse also attended.

Determinations:

1. The Landlord and the Tenant entered into an agreement to terminate the tenancy as of July 31, 2023 (the 'N11'). The Landlord filed an application to terminate the tenancy and for an eviction order pursuant to the N11 Agreement that the parties signed.
2. For the reasons explained below, I am not satisfied on the balance of probabilities that the Landlord and the Tenant entered into an agreement to terminate the tenancy.

Preliminary Issue- Address of the Rental Unit

3. The Landlord's application was directed to a hearing because of deficiencies identified in the application regarding the address of the rental unit.
4. In the application, the Landlord listed the address of the rental unit as "39 Mac Frost Way, Scarborough, ON M1X0C5. However, on the N11, the Landlord listed the address as 39 Mac Forst Way. The municipality, province and postal code were not identified on the N11. All agree that the correct address is 39 Mac Frost Way, Scarborough, ON.

5. The Tenant's Legal Representative submits that the N11 should be found invalid because it did not meet the mandatory notice requirements and, as a result, must be dismissed.
6. The Landlord's Legal Representative submits that the incomplete address was merely an inadvertent clerical mistake, and that it would be unfair to dismiss the application on that basis.
7. The importance of properly identifying the rental unit is relevant to the ability of the Sheriff to enforce an eviction on the right rental unit, pursuant to a Board order terminating the tenancy and for eviction.
8. Section 43(1) of the *Residential Tenancies Act, 2006* (the 'Act') applies to notices of termination given by a landlord or a tenant and specifies that the notice must clearly identify the rental unit. Once given, notices of termination cannot be amended. As the Landlord's Legal Representative correctly points out, an N11 is not a notice of termination.
9. Section 212 of the Act states that "Substantial compliance with this Act respecting the contents of forms, notices or documents is sufficient." That is to say that mistakes or typographic errors in filling out forms will not invalidate an otherwise valid document.
10. The N11 is not a notice of termination. The Landlord made a clerical error. The I find that the incomplete address causes minimal prejudice to the Tenant. The application named the correct address. The Tenant was aware that the N11 was meant for her and that it was in respect of her rental unit. The document substantially complies with the Act.
11. The request to dismiss the application on that basis is denied.

The L3 Application: Issue To Be Decided

12. The only issue to be determined at this hearing was whether the parties came to a mutual meeting of minds such that they truly and jointly wished to end the tenancy.
13. The Landlord's position is that the Tenant willingly agreed to move out of the unit because the Landlord wanted to sell the unit.
14. The Tenant disagrees that she freely signed the N11. She referred to a series of text message exchanges between the parties which she filed with the Board. I note that most of these messages lacked particulars of the dates they were sent/received. The Tenant provided further detail in her oral evidence.
15. The Tenant confirmed that she has resided in the unit since 2018. The parties entered into a written fixed-term lease for one year, which was renewed annually. The current fixed-term ended on July 31, 2023.

The Tenant's Evidence: Signing of the N11 Agreement

16. R.C. is the Landlord's spouse. He manages the tenancy, including performing repairs and other duties of a property manager.

17. There is no dispute that on March 8, 2023, the Tenant received a text message from R.C., with a screenshot of the second page of an N11 signed by the Landlord on March 3, 2023. R.C. states in the message: "Please check your email and sign back to me, thank you!". R.C. then emailed screenshots of both pages of the signed N11 to the Tenant.
18. The Tenant testified that she did not understand the N11. She called R.C. a few times after receiving the screenshots of the N11 but he did not respond. R.C. eventually told her that he would come to her unit with the N11. She waited for him to make those arrangements.
19. On April 6, 2023, R.C. came to the unit alone to make some minor repairs to a kitchen electrical outlet. While he was there, he presented a paper copy of the N11 to the Tenant and explained that (i) the Landlord wanted to sell the house and (ii) the N11 would end the tenancy.
20. The Tenant's clear recollection is that R.C. told her to sign the N11 right there, stating that he had given her a few weeks already. She informed him that she needed to discuss it with her adult son and then she would sign it. That was because Tamil is her first language and she needed her son to review the document with her to ensure she understood what it meant. After she signed it, her son would give it to R.C..
21. The evidence was that R.C. told her that she had already taken too much time and so refused to give her that opportunity, repeating that she had to sign it "right now". She described R.C.'s behaviour as aggressive and intimidating. She stated that she signed the N11 while he was there, even though she did not want to, because she felt significant pressure from R.C. to sign it.
22. On June 7, 2023, the Tenant asked R.C. if she could stay another year if she paid an extra \$100.00 monthly for rent. R.C. responded: "I have to sell the house." At some point after, the Landlord agreed to extend the vacate date to August 31, 2023.
23. The Tenant alleges that R.C.'s conduct during the signing of the N11 is typical of how he often communicates with her. She pointed a text message R.C. sent to her on August 31, 2023:

"Please answer the phone. I'm going to open the door tomorrow, please don't break your credit. If you still don't move out, I will ask a lawyer to sue you. All my losses will be borne by you."
24. R.C. continues in the message: "I gave you a lot of tolerance, please don't keep challenging me." This was followed by: "I don't understand you so that you still don't want to move out, right?" When the Tenant responds that she is at work and will call him later, R.C. replies: "I know you're home, and if you don't answer me again, I'll call the police."
25. The Tenant's oral evidence, as follows, is uncontested:
 - The Tenant always consults with her son about important issues.
 - R.C. never asked the Tenant in advance if she was willing to move out.

- The Tenant had no opportunity to negotiate a move-out date with the Landlord or R.C..
- R.C. did not suggest to her that she could take the opportunity to seek legal or other suitable advice before she signed the N11.
- R.C. never explained what might happen if she did not sign the N11 or if she did not vacate the unit on the termination date.
- R.C. never explained to the Tenant (i) what the Board process was for requesting a termination of the tenancy and eviction.
- R.C. did not discuss the alternatives that the Landlord could consider in order to terminate the tenancy if she declined to sign the N11, such as serving her with an N12 notice of termination, the termination process and the rights and obligations of the parties under the Act in that regard.
- The Tenant did not appreciate the practical and legal consequences of signing the N11.
- The Landlord never offered the Tenant any compensation in exchange for her vacating the unit at his request.

26. The Landlord's Legal Representative declined to cross-examine the Tenant.

The Submissions by the Landlord's Legal Representative

27. Contrary to the Tenant's testimony that R.C. never came to the unit in March 2023 to give her the N11, the Landlord's Legal Representative submits that the Landlord did deliver a hard copy of the N11 form to the Tenant in person on March 8, 2023. No evidence was presented at the hearing to support this assertion.

28. The Landlord's position is that:

- R.C. did not misrepresent the content of the N11 to the Tenant at any time.
- R.C. did not act in an unlawful manner when presenting the N11 to the Tenant, such as by utilizing duress or coercion.
- The Tenant had more than one month to sign the agreement, which was sufficient opportunity to review it, to obtain advice and to sign it.
- When the Tenant did sign it, she did so voluntarily, knowing full well that she would be ending the tenancy on July 31, 2023.

29. The Landlord's Legal Representative referred to communications between the parties about the "case being withdrawn". There was insufficient evidence led to clarify what "case" the parties were referring to, or to establish the relevance.

The Tenant Did Not Enter Into an Agreement to End the Tenancy

30. The Tenant impressed me as a forthright, consistent and credible witness. She did not waver in her testimony at any point.

31. It is true that the Tenant received a picture of the N11 by text message and email one month prior to her signing it. The Tenant gave a reasonable explanation about

why she did not sign the N11 after she first received it. The Tenant was free to disregard the N11 document and, if she had verbally agreed to end the tenancy previously, she was free to change her mind before signing the N11.

32. The Landlord did not testify to refute the Tenant's position. Instead, the Landlord chose to rely solely on the submissions of her legal representative.
33. Any weaknesses with respect to the Tenant's evidence might have been underscored with oral evidence from the Landlord and R.C., and through cross-examination. No evidence was adduced in this way.
34. R.C. was in the best position to respond to the Tenant's allegations. Given his key role in the issues before me, I am left with having to draw an adverse inference that his evidence would not have been helpful to the Landlord's case.
35. This left the Landlord's position unsupported and the Tenant's testimony uncontested.

N11 Agreements and Unconscionability

36. There are exceptions to the rule that parties are bound by the deals that they negotiate. A contract may be set aside where one party agrees to it under duress, by fraud or by misrepresentation, or because the agreement is unconscionable.
37. Consideration may be given to whether the agreement was clearly an unsound or rash choice by the Tenant which was the result of those factors being present, resulting in a "grossly unfair and improvident transaction"¹.
38. Pursuant to the *Law of Contract in Canada*², an agreement is unconscionable when:

"the victim's consent was not obtained or given when he or she was physically, emotionally, or intellectually free and competent to give it, but was the product of some minatory, over-weening³ or improperly persuasive conduct on the part of the guilty party."

39. The Court of Appeal in *Swampillai v. Royal & Sun Alliance Insurance Company of Canada* (Ont CA, 2019)⁴ confirmed the basic elements of unconscionability which might justify repudiation of consent:

(1) one party did not have independent legal or other suitable advice in order to provide informed consent;

¹ *Davis v. Cooper*, 2010 ONSC 4230, at paras 10-11.

² *The Law of Contract in Canada*; 6th Ed., Fridman, G.H.L., Toronto: Carswell, 2011.

³ 'Minatory': intimidating or threatening behaviour; 'over-weening': excessive, presumptuous and arrogant behaviour (Cambridge Dictionary – web version).

⁴ *Titus v. William F. Cooke Enterprises Inc.*, 2007 ONCA 573 (CanLII), [2007] O.J. No. 3148 (C.A.),. See also the Supreme Court of Canada decision in *Uber Technologies Inc. v. Heller* (SCC, 2020).

- (2) an overwhelming imbalance in bargaining power exists, caused by ignorance of business, illiteracy, language barriers, or disability; and
- (3) the other party knowingly takes advantage of this vulnerability.

- *Informed Consent*

40. I am not persuaded that the Tenant gave her informed consent to the N11 when she signed it. I find that her consent was invalidated because it failed to meet the relevant legal test. The elements of the test are:

- There is an agreement;
- The person making the agreement understands any risks of agreeing and not agreeing; and
- The person making the agreement understands the options or alternatives to making the agreement.

41. In order for a tenant to give informed consent, the landlord must provide sufficient information to the tenant, of the kind that a reasonably thoughtful person would understand, and find relevant to their situation, in order to make a rational choice about ending the tenancy and giving up their home.

42. While there is no provision in the Act requiring a landlord to inform a tenant of the wisdom of taking the opportunity to seek legal or suitable advice prior to entering an agreement to terminate the tenancy, this does not mean that landlords are completely absolved from taking this precautionary step.

43. Not only did the Landlord not take this step, when the Tenant requested such opportunity, R.C. refused.

44. There is no doubt the parties signed an agreement. However, I am satisfied on the balance of probabilities that the Tenant did not fully understand the seriousness of the agreement or the risks of agreeing to end the tenancy. The Landlord never provided her with information about N12 or N13 notices of termination, which would be an alternative to the N11.

45. The Landlord's Legal Representative points to the fact that the Landlord is not educated and this should be factored into the decision. Certainly, the lack of professionalism is evident in the format and terms of the residential lease. I do not accept this submission. If one is going to be a landlord then one should take reasonable steps to know the laws and to be fully aware of complying with one's responsibilities under the Act.

46. It is not unreasonable to conclude that the Landlord, with the assistance of R.C., intended to use surreptitious tactics to pressure the Tenant to end the tenancy early. This allowed the Landlord to bypass the Board's legal processes and evade the proper process pursuant to sections 49 to 50 of the Act.

47. Based on the evidence before me, I find that the agreement is unconscionable and cannot be upheld. It is evident the Landlord unduly pressured the Tenant into signing the N11 despite her obvious discomfort and objections.
48. The Landlord's application to terminate the tenancy and for an eviction order is denied.
49. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The Landlord's application is dismissed.

October 11, 2023
Date Issued

Elle Venhola
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.