



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

Citation: Su v Klein-horsman, 2023 ONLTB 62610

Date: 2023-09-15 **File Number:**
LTB-L-022710-23-SA

In the matter of: 567 GRASSLANDS CRT
WATERLOO ON N2V2R5

Between: Di Su Landlord

And

Daniel Klein-horsman and Kyle Power Tenant

Di Su (the 'Landlord') applied for an order to terminate the tenancy and evict Daniel Kleinhorsman and Kyle Power (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-022710-23, issued on May 9, 2023 . This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-022710-23.

The motion was heard by videoconference on June 20, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by Ling Xi. The Tenants consulted with Tenant Duty Counsel prior to the hearing.

Determinations:

1. The Landlord's L3 application is based on a N11 agreement to terminate the tenancy signed by both parties – the Tenants and the Landlord, with a termination date of February 28, 2023. Pursuant to subsection 77(1)a of the Act, the Landlord filed an L3 application and obtained an eviction order on an *ex parte* (meaning without hearing) basis.
2. On May 17, 2023, the Tenant (DKH) filed a motion to set aside this *ex parte* order. In his motion he asserts that while KP moved out prior to the termination date, he signed the

N11 on the condition that a new lease would be signed naming him and SM as the Tenants of the same rental unit. This new lease was signed on February 19, 2023 to begin March 1, 2023.

3. This motion was brought pursuant to subsection 77(8) of the Residential Tenancies Act, 2006 (the 'Act'). It essentially requires the Board to determine the following:
 - a) First, did the Tenant enter into an agreement to terminate with the Landlord?
 - b) Second, if he did enter into an agreement to terminate, is the Board satisfied "having regard to all the circumstances, that it would not be unfair" to set aside the eviction order?
 - c) Third, and if it would be unfair to set aside the order, should the lifting of the stay of the eviction order be delayed for some reason?
4. By way of background, this tenancy began in October 2021. The lawful monthly rent is \$2,524.94 and is due on the first day of each month.

Tenant's Evidence

5. At the hearing, DKH testified that while he did sign the N11 agreement to terminate the tenancy, this was to ensure a clean end to his tenancy with KP and a fresh start for him and SM with a new tenancy agreement (with the same terms) to begin March 1, 2023.
6. DKH testified that on September 20, 2022, he texted the Landlord asking if KP could be removed from the lease and SM to be added effective November 1, 2022. The Landlord's wrote back to him two days later indicating that since both Tenants were on the lease, both Tenants would have to sign a N11 and DKH would have to reapply with SM. The Tenant opted to reapply and sign a new lease two days after that.
7. On September 28, 2022, the Tenant filed out a new application. On November 1, 2022 he followed up with the Landlord's agent, indicating that he had not yet received any paperwork regarding the new lease.
8. In January 2023, the Landlord attended the premises to address maintenance work and was surprised to see SM residing at the unit. On February 3, 2023, the Tenant wrote to the Landlord the following via email:

Hello kw management

The lease signed by myself and Power is to be terminated. Termination Date should be one day prior to the start date of New Lease. I will execute (and Power too) when New Lease has been approved by myself and Scott. Scott and myself will sign a new lease AT SAME RENT ON SAME TERMS as original lease. Once kw property has provide this document (as it is no longer available on e doc) we will have our legal representative review before signing. Please send New Lease as a PDF.

Thanks

Dan

9. DKH testified that the Landlord's agent informed them that the new lease had been approved by the Landlord on February 19, 2023. But there was no communication from the Landlord until the N11 was sent to KP on February 27, 2023 and to DKH on March 2, 2023.
10. DKH testified that at no point did he intend to move out of the rental unit; the plan was always to continue renting with his new tenant, SM.
11. On cross-examination, DKH confirmed that the N11 was in effect to terminate the original lease; he also confirmed that he did not receive a new lease with the Landlord's signature. He further confirmed that on March 11, 2023, he had asked the Landlord's agent to draft the N11 – and confirmed that by this point, a new lease agreement had not been signed or confirmed by the Landlord.
12. The Tenant further confirmed that he signed the N11 on March 13, 2023 after receiving the N4 notice of termination and was aware of the rent arrears that were owing under his previous tenancy. he also confirmed that the new lease that he had signed reduced the rent to \$2,495.00.
13. The Tenant seeks that his motion be granted and seeks that the new lease agreement he signed be deemed valid.
14. In the alternative, the Tenant seeks a delay in eviction of 90 days to find another place to live.

Landlord's Response

15. The Landlord testified that in January 2023, when she attended the rental unit to find SM residing there, she was advised by KWPM that that was the new occupant, SM. The

Landlord directed KWPM to have a new lease signed by the current occupants, DKH and SM, however, the rental application was not approved due to insufficient income.

16. The Landlord testified that in February 2023, KWPM advised that the Tenant proposed to sign a new lease with SM at the original rent of \$2,495.00. The Landlord refused as the terms were not agreeable and a copy of this email was submitted into evidence, dated February 21, 2023. In that email, the Landlord clearly stated that she no longer wished to sign a lease and directed KWPM to issue N4/N8 notices of termination as needed.
17. The Landlord testified that in March 2023, the Tenant short-paid the rent and the Landlord directed their agent to serve a N4 to the rental unit. DKH contacted the Landlord's agent and requested that the N11 be drafted, and it was signed on March 14, 2023.
18. The Landlord seeks that the Tenant's motion be denied and the stay be lifted immediately.
19. The Landlord opposes the Tenant's request for a further three-month extension because he believes this is yet another delay tactic on the part of the Tenant.

ANALYSIS

20. Based on the evidence before me, I do not find that the agreement to terminate the tenancy was signed as a result of being misled or pressured by the Landlord. I say this because the evidence before me confirmed the Tenant had sought independent legal advice prior to signing the N11, was aware of the options presented by the Landlord to enter into a new lease with SM and chose to reapply; and did not receive a new lease agreement (or a promise of one) upon signing the N11. Moreover, it appears the N11 was signed after receiving the N4 notice of termination for rent arrears.
21. The next question, then, is whether under all of the circumstances, it would not be unfair to set aside the eviction order.
22. Given all of the circumstances I am satisfied that it would be unfair to set aside the eviction order. I say this because what appears to be the case is, the Tenants fell into arrears, chose to terminate the tenancy and end their liability for the arrears, and have continued to live in the rental unit since then without paying rent. A continuation of the tenancy would be prejudicial to the Landlord.
23. With respect to the Tenant's request for relief, I find that given the length of the tenancy and the Tenant's personal circumstances, a short delay to September 30, 2023 is warranted.
24. An order shall issue accordingly, lifting the stay on September 30, 2023.

25. This order contains all of the reasons for my decision within it. No further reasons shall be issued.

It is ordered that:

1. The motion to set aside Order LTB-L-022710-23, issued on May 9, 2023, is denied.
2. The stay of Order LTB-L-022710-23, is lifted on September 30, 2023.

September 15, 2023

Date Issued

Sonia Anwar-Ali

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.