



Order under Section 77 Residential Tenancies Act, 2006

Citation: Mitchell v Clayton, 2023 ONLTB 56859

Date: 2023-08-23

File Number: LTB-L-043085-23

In the matter of: 307 Fennel
Blandford-Blenheim ON N0J1S0

Between: Charles Daniel Mitchell Landlord

And

Brandan D.W Robertson Tenant

Charles Daniel Mitchell (the 'Landlord') applied for an order to terminate the tenancy and evict Brandan D.W Robertson (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 July 17, 2023. The Landlord and the Tenant attended the hearing.

Determinations:

Named parties:

1. For the reasons set out below, the application is amended to remove Danielle Clayton as a Tenant and/or responding party to this application.

Evidence and procedural background:

2. The Landlord's L3 application was filed on May 31, 2023 and alleges that the parties agreed to terminate the tenancy effective September 1, 2023. The Tenants signed an agreement to terminate the tenancy on May 10, 2023.
3. On June 8, 2023 the matter was directed to a hearing by the Board as only one of the Tenants listed on the application signed the agreement to terminate the tenancy.
4. The Landlord's application and the agreement to terminate the tenancy lists two Tenants, Danielle Clayton and Brandan Robertson. Only Mr. Robertson signed the agreement to terminate the tenancy. Under Ms. Clayton's name, the Landlord handwrote "abandoned".

5. At the hearing, the parties agreed that the Tenant Danielle Clayton vacated the rental unit on or about May 5, 2023. The Landlord submitted into evidence email correspondence between himself and Ms. Clayton confirming that she vacated the rental unit and did not want to be responsible for the unit beyond May 5, 2023.
6. The Tenant agrees to signing the agreement to terminate the tenancy, but no longer wishes to vacate the rental unit. The Tenant stated that at the time of signing the agreement he was angry with the Landlord and had recently separated with his partner and prior joint tenant and as such, agreed to sign a agreement to terminate his tenancy.
7. The Tenant testified that earlier in the year, the Landlord advised the parties that he intended to move into the rental unit with his wife. The Tenant argues that the Landlord should have served him with an N12 notice of termination and not a signed agreement to terminate the tenancy.
8. The Landlord disputed the alleged discussion and stated that he does not wish to reside in the rental unit. The Landlord stated that the parties discussed terminating the tenancy after the Tenants separated and because Mr. Robertson could no longer sustain the tenancy. The Landlord did state however that his wife's niece will most likely occupy the rental unit once vacant.

Analysis:

9. Section 77(1) of the *Residential Tenancies Act, 2006* (the Act) states:

77 (1) A landlord may, without notice to the tenant, apply to the Board for an order terminating a tenancy and evicting the tenant if,

- (a) the landlord and tenant have entered into an agreement to terminate the tenancy; or
- (b) the tenant has given the landlord notice of termination of the tenancy.

10. There is no dispute that the Landlord and the Tenant entered into an agreement to terminate the tenancy on May 10, 2023. I also find that despite the matter being directed to a hearing, that the agreement to terminate was valid. Although the Tenant Danielle Clayton was listed on the L3 application, the evidence before the Board is clear that she vacated the rental unit prior to signing the agreement to terminate the tenancy. As such, there was no requirement for Ms. Clayton to sign the agreement to terminate.

11. Subsection 37(3) of the Act also states:

Termination by agreement

(3) A notice of termination need not be given if a landlord and a tenant have agreed to terminate a tenancy.

12. I do not accept the Tenant's argument that the Landlord's application should be dismissed because the Landlord should have served the Tenant with an N12 notice of termination.
13. Firstly, there was insufficient evidence at the hearing to support the Tenant's allegation that the Landlord required vacant possession of the rental unit for his own use. The Landlord disputed the alleged discussion, and the Tenant provided no witnesses, written correspondence, or audio recordings to support that such a discussion took place.
14. Further, although the Landlord stated that his niece would reside in the rental unit once the Tenant had vacated, I find that this would not trigger a N12 notice of termination under the Act. Section 48 of the Act lists who can occupy a rental unit in accordance with a N12 notice of termination. Nieces are not included on this list.
15. Based on the evidence before me, I am satisfied on a balance of probabilities that the Landlord and Tenant on May 10, 2023 signed a valid agreement to terminate the tenancy effective September 1, 2023. I am also satisfied that at the time of signing the agreement that the Tenant had intent to terminate the tenancy and did not sign the agreement under duress.

Relief from eviction:

16. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the 'Act'), and find that it would not be unfair to postpone the eviction until October 15, 2023 pursuant to subsection 83(1)(b) of the Act.
17. At the hearing, the Tenant testified that he is currently residing alone and has been unsuccessful in securing a new rental unit. The Tenant testified that his current income is insufficient to not only secure a new tenancy, but to also sustain the current rental unit.
18. The Landlord provided no evidence with respect to the Landlord's circumstances or prejudice to the Landlord if termination would be delayed.
19. The Tenant has resided in the rental unit for approximately six years and has recently experienced some unforeseen hardship. As such I find it would not be unfair to delay termination to allow the Tenant some additional time to secure alternate housing.

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 October 15, 2023.
2. If the unit is not vacated on or before October 15, 2023, then starting October 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 October 16, 2023.

August 16, 2023

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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on April 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.