



Order under Section 77 Residential Tenancies Act, 2006

Citation: Zhang v Chen, 2023 ONLTB 53195

Date: 2023-07-26

File Number: LTB-L-027366-23

In the matter of: Basement room, 650 HUNTINGWOOD DR
SCARBOROUGH ON M1W1H5

Between: Karen Zhang Landlord

And

Zhi Jian Chen Tenant

Karen Zhang (the 'Landlord') applied for an order to terminate the tenancy and evict Zhi Jian Chen (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 June 6, 2023.

The Landlord and the Tenant attended the hearing. The Landlord was represented by her son Gary Chen.

Determinations:

1. As explained below, I find The Landlord and Tenant entered into an agreement to terminate the tenancy as of March 31, 2023, and the Tenant did not move out of the rental unit by the termination date set out in the agreement.

Agreement to Terminate Tenancy

2. On January 18, 2023, the parties signed an agreement to end the tenancy on March 31, 2023 (the 'N11')
3. The Tenant believes he was coerced into signing the N11. He states he did not understand residential tenancy law when he entered into the agreement.
4. The Tenant also believes the believes the N11 was a way for the Landlord to avoid serving a notice of termination (the 'N12'). By avoiding serving the N12 the Landlord was able to avoid the paying the Tenant one month's compensation under s. 48 of the *Residential Tenancies Act, 2006* (the 'Act').

5. An N11 is an agreement to terminate the tenancy. While the Tenant told the Board he does not understand residential tenancy law, you do not have to be proficient in residential tenancy law to understand basic contract law. A reasonable person understands once you enter into an agreement you can not unilaterally repudiate it.
6. In *Stott v. Merit Investment Corp.*, 1988 CanLII 192 (ON CA) Finlayson the Court of Appeal stated, in part, as follows:

“... But not all pressure, economic or otherwise, is recognized as constituting duress. It must be a pressure which the law does not regard as legitimate and it must be applied to such a degree as to amount to “a coercion of the will”, to use an expression found in English authorities, or it must place the party to whom the pressure is directed in a position where he has no “realistic alternative” but to submit to it, to adopt the suggestion of Professor Waddams (S.M. Waddams, The Law of Contract, 2nd ed. (1984), at p. 376 et seq.). Duress has the effect of vitiating consent and an agreement obtained through [sic] duress is voidable at the instance of the party subjected to the duress unless by another agreement or through conduct, either express or implied, he affirms the impugned contract at a time when he is no longer the victim of the duress.”

7. I have considered the evidence before the Board, and I do not find the Tenant entered the agreement to terminate the tenancy by duress or coercion. Rather, the Tenant discovered a notice of termination served under s.48 would be more favourable to him and decided to unilaterally repudiate the agreement.
8. If the Tenant believed a notice of termination would be more favourable to him, he did not have to enter into the agreement to terminate the tenancy. It is not open for a Tenant to agree to terminate the tenancy and then change his mind.
9. I find the parties entered into an agreement to terminate the tenancy. Further, I was not presented with any compelling reason why the Board should interfere with the agreement of the parties. Accordingly, the tenancy shall be terminated in accordance with the agreement.

Relief from Eviction

10. According to s. 83 of the Act when the Board hears an application for an order evicting a tenant, the Board must consider whether there are any circumstances that support granting relief from eviction.
11. In this instance, I find a slight delay in eviction is appropriate. The Tenant told the Board he would require two months to find a new place to live if the Board did not find in his favour. I find this to be reasonable.

12. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Act and find that it would not be unfair to postpone the eviction until September 30, 2023, pursuant to subsection 83(1)(b) of the Act.

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 September 30, 2023.
2. If the unit is not vacated on or before September 30, 2023, then starting October 1, 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 August 1, 2023.
4. The Tenant shall also pay to the Landlord \$186.00, for the cost of filing the application.
5. If the Tenant does not pay the Landlord the full amount owing on or before August 6, 2023, the Tenant will start to owe interest. This will be simple interest calculated from August 7, 2023, at 6.00% annually on the balance outstanding.

July 26, 2023
Date Issued

Bryan Delorenzi
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 February 7, 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.

