



Order under Section 77 Residential Tenancies Act, 2006

Citation: ONEILL v DOYLE, 2023 ONLTB 34552

Date: 2023-05-26

File Number: LTB-L-073310-22-SA

In the matter of: 10410 RIDGE LINE
BLENHEIM ONTARIO N0P1A0

Between: BROOKE ONEILL and SALLY GUAY Landlord

And

BRENDA DOYLE Tenant

BROOKE ONEILL and SALLY GUAY (the 'Landlord') applied for an order to terminate the tenancy and evict BRENDA DOYLE (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

This set aside motion was conducted by written hearing. The final date for submissions was on October 4, 2022.

Procedural History:

Accommodation Request and Written Hearing Format Granted

1. On August 9, 2022, the Tenant filed a letter to the Board which stated they would experience difficulty participating in the hearing by telephone as a result of their accommodation needs. The Tenant does not have access to the technology required to participate by video conference.
2. On August 12, 2022, the Tenant requested the hearing format be changed from electronic to written, as a result of their accommodation needs. The Tenant stated they would experience difficulty traveling to a local hearing site to participate in person or to the LTB's Hearing Centre in London to participate using a Public Access Terminal.
3. Interim Order (LTB-L-009852-22-IN) issued by Vice Chair Henry on August 15, 2022, granted the Tenants the accommodation under the *Human Rights Code*,

R.S.O. 1990, c. H. 19, as amended. The Interim Order directed LTB staff to cancel the electronic hearing scheduled for August 29, 2022, and it also granted the written hearing format.

Determinations:

1. The Landlord and Tenant entered into an N11 agreement to terminate the tenancy as of June 1, 2022 and the Tenant did not move out of the rental unit by the termination date set out in the agreement.
2. The parties were provided a deadline of August 25, 2022 to object to the hearing format being changed. Neither the Landlord nor the Tenant objected to the hearing format changing from electronic to written.
3. The final submission deadline was October 4, 2022.
4. I am satisfied both parties served each other their response and reply evidence in accordance with the interim order.
5. From the date this order is written, the Board believes the Tenant is still in possession of the rental unit, as there has been no evidence submitted by either party to believe otherwise.
6. Order SWL-58300-22 claimed the Landlord and the Tenant signed an agreement to terminate the tenancy as of June 1, 2022, and the Tenant did not move out of the rental unit by the termination date.
7. In support of the motion to set aside the order, the Tenant states an unnamed Estate Lawyer and the unnamed associate told her she had to sign the N11 agreement. It was only after the Tenant signed the N11 agreement did she realize the unnamed Estate Lawyer cannot force the Tenant to sign the N11.
8. The Landlord is opposed to this motion stating they have waived rent for March, April, and May 15, 2022. The Landlord feels there is sufficient funds for the costs of new accommodations and re-locating.

Analysis

9. Subsection 77(6) of the Act states:

“The respondent may make a motion to the Board, on notice to the applicant, to have the order under subsection (4) set aside within 10 days after the order is issued.”

10. Upon review of the Tenants, the Tenant failed to establish if the N11 agreement they signed on March 15, 2022, was signed due to common mistake, fraud, duress, misrepresentation, lack of capacity, or unconscionability.

11. In the Tenants submissions they make mention about section 83 issues which are not related to this set aside motion. The Tenants issues in the motion are raising funds to relocate, she has been subject to lies, manipulation, harassment, intimidation, her mail tampered, trespassed, and her health threatened by Brook O'Neil.
12. While the Tenant alleges the Estate Lawyer and Associate told her she must sign the agreement, she has failed to present any evidence to support this claim.
13. When I review the N11 agreement, the Tenant signed the N11 on or about March 15, 2022. The Tenant could had sought independent legal advice from either a legal representative or by contacting Tenant duty counsel before signing this agreement. The Tenant failed to present any evidence to support this N11 agreement had been signed due to common mistake, fraud, duress, misrepresentation, lack of capacity, or unconscionability.
14. Further, the Tenant does not dispute being forgiven the rent for March, April, and May. Even in the Tenants own submission she stated, " I am not doing anything to make things worse as I want to desperately be able to vacate asap".
15. It appears when I examined all the Tenants submissions, they have buyers' remorse because if the true intention was not to delay the eviction and vacate "asap" this motion would not have been brought forward by the Tenant.

Section 77(8)(a)(i) of the Act

16. I am not satisfied that the ex parte order should be set aside based on section 77(8)(a)(i) of the Act. I am satisfied the agreement to terminate the tenancy was entered by the parties with no cause to doubt consent and capacity.

Section 77(8)(a)(ii) of the Act

17. I turn now to whether it would be unfair to set aside the ex parte order.
18. The Tenant submitted she is a cancer patient and has been living in the rental unit 10 years. The Tenant recognized she needs to find a new accommodation and wishes to vacate the rental unit as soon as possible. In the request, the Tenant may have live issues if the order had not been signed ex parte and an L3 hearing could had proceeded.
19. The N11 agreement was signed after the Landlord agreed to waive the monthly rent from March, April, and May. The bargaining related to the timing of the termination date, as the Landlord needed to close on the property. However, to deny or delay eviction would cause great prejudice, as the property needed to close on or about June 17, 2022.

20. Having considered all the evidence and submissions presented, I am of the view that it would be unfair to grant the set aside motion. The agreement was entered into voluntarily. As stated earlier, there was insufficient evidence to support the Tenant's assertions to the contrary.

It is ordered that:

1. The motion to set aside order SWL-58300-22, issued June 24, 2022, is denied. The order is confirmed and remains unchanged.
2. The stay of order SWL-58300-22 is lifted immediately.

May 26, 2023

Date Issued

Anthony Bruno

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.

