



Order under Section 77 Residential Tenancies Act, 2006

Citation: Mark v Igwebuike, 2023 ONLTB 32637

Date: 2023-04-27 **File**

Number: LTB-L-011837-23

In the matter of: 3307, 20 SHORE BREEZE DR ETOBICOKE
ON M8V0C7

Between: Innis Mark Landlord

And

David Igwebuike Tenant

Innis Mark (the 'Landlord') applied for an order to terminate the tenancy and evict David Igwebuike (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

A hearing was held to consider this application.

This application was heard by videoconference on March 20, 2023.

The Landlord, the Landlord's representative M. Yarmus and the Tenant attended the hearing

Determinations:

1. Subsection 77(1) of the Residential Tenancies Act, 2006 (the "Act") provides that a tenancy may be terminated where "*the landlord and tenant have entered into an agreement to terminate the tenancy*" or where the "*tenant has given the landlord notice of termination of the tenancy*". In this application, the Landlord seeks an order terminating the tenancy as a result of the Tenant's notice to terminate the tenancy for February 28, 2023.

2. In December 2022, the parties engaged in communications about possibly ending the tenancy. Subsequently, and in accordance with those discussions, the Landlord received a text message from the Tenant on February 2, 2023 which stated, in part, that he “*will be moving by the end of this Feb*”.
3. The Landlord produced a copy of the text communication, as well as the Landlord’s response to the Tenant’s proposed termination date, in which he says, “*thank you for letting me know*”.

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4. Based upon the evidence presented, I do not find the Tenant was unduly pressured or coerced into sending the notice to terminate tenancy. While the Tenant’s notice merely provides for less than 1 month’s notice to termination, I find the Landlord’s subsequent response constitutes an acceptance of the Tenant’s notice and as such, I find the parties had a meeting of the minds and entered into an agreement to terminate tenancy for February 28, 2023.

Section 83

5. Section 83 requires that I consider all the circumstances, including the Tenants’ and the Landlord’s situations to determine if it would be appropriate to grant section 83 relief from eviction.
6. The Landlord seeks termination as soon as possible, indicating there has been no rent paid since June 2022 and that the arrears exceeded \$37,000 as of the end of March 2023. Moreover, the Landlord indicated there has been no water bills paid for some time which could form a lien on the property.
7. The Tenant has resided at the property since August 2021, alongside his spouse and his son. He indicated he has not been working and suffers from certain health issues. The Tenant indicated he has been looking for alternative accommodations.
8. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the Residential Tenancies Act, 2006 (the ‘Act’), and given the parties’ circumstances, find that it would be unfair to deny eviction.

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 May 15, 2023.

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

April 27, 2023

Date Issued

Peter Nicholson

Member, Landlord and Tenant Board

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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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on November 16, 2023 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.

