



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

Citation: ZARE v AHMED, 2023 ONLTB 33920

Date: 2023-04-26 **File Number:**
LTB-L-064808-22-SA

In the matter of: 922 GUILDWOOD BOULEVARD LONDON
ON N6H5S9

Between: Mohammadhosein Zare Landlord

And

Abba Nuhu Ahmed Tenant

Mohammadhosein Zare (the 'Landlord') applied for an order to terminate the tenancy and evict Abba Nuhu Ahmed (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-064808-22, issued on November 17, 2022. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-064808-22.

The motion was heard by videoconference on February 2, 2023.

The Landlord, the Landlord's Legal Representative, Loryn Lux, the Tenant, and the Tenant's Legal Representative, Allison Darling, attended the hearing.

Determinations:

1. The Landlord and Tenant entered into an agreement to terminate the tenancy as of November 30, 2022.
2. The Tenant filed a motion to set aside the order. The Tenant claims that not only did the Landlord misrepresent the N11 form ('N11') the Tenant signed, but the otherwise binding agreement was unconscionable because, at the time, the Landlord took unfair advantage of him.

Tenant's evidence

3. The Tenant, ('A.A'). is 67 years old and has been residing in the rental unit since November 2021. The rental unit is a two-storey house with a basement apartment however, at the commencement of the tenancy on November 23, 2021, the construction of the basement apartment was not complete.

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4. A.A. testified it was his understanding that he was renting two rental units: the main floor and the basement. He stated he rented the basement for his daughter as he did not want conflicts with other tenants, thus why he rented both units. He added the monthly rent for the main floor is \$2,450.00 and the basement is \$850.00. A.A. was staunch in his testimony that he rented two units from the Landlord.
5. A.A. stated he and the Landlord have a tenancy agreement ('agreement') however he conceded he did not read nor sign the agreement and only looked at it when the Landlord wanted him to vacate the rental unit. He testified it was not until this time that he realized the agreement was written as the whole house as opposed to two units. A.A. also stated he did not sign the agreement and alleged the Landlord or the Landlord's Agent forged his signature.
6. A.A. testified when the Landlord requested he sign the N11, it was his belief he was to vacate the main floor unit therefore, in July 2022, he moved into the basement unit and continues to reside there. He further stated he returned the keys to the main floor to the Landlord on August 9, 2022.

Landlord's evidence

7. The Landlord ('M.Z.') gave testimony that the Tenant rented the main floor of the house and not two separate units. He stated, as advertised, the main floor house was listed for rent for \$3,330.00 per month and the basement walkout apartment was explicitly excluded.
8. The Landlord's Legal Representative submitted the listing of the property as evidence. In this listing it is clear M.Z. intended to rent only the main floor of the house.
9. M.Z. testified that at the commencement of the tenancy, the basement was not a livable space. He stated it was always his intention to not include the basement as he was keeping the basement for himself or for his wife.
10. M.Z. stated that prior to entering into the tenancy agreement, A.A. was aware the basement was not a livable space nor was it equipped to be a basement apartment. M.Z. said it was A.A. who insisted on renting the whole house and on January 3, 2022 began making demands that the basement renovations be completed including install a stair rail, a stove and a microwave.

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11. M.Z. stated that at no time did he agree to rent the main floor and basement of the house as two separate units nor did he agree to the rent amounts A.A. stated in his testimony. He further stated the monthly rent was \$3,300.00 and the rental listing was clear that the basement was excluded.
12. M.Z. testified that sometime in June 2022, he informed A.A. he and his family were moving back to London and would be moving into the house. He stated he did not provide A.A. with an N12 Notice for Landlord's Own Use but he did provide A.A. with five months notice to find alternative housing.
13. The Landlord's Legal Representative submitted emails between the parties dated from January 3, 2022 to September 9, 2022 as evidence. These emails show clear communication between A.A. and M.Z. discussing tenant rights, property management, the use of the basement, and the N11.
14. M.Z. testified to particular email correspondence in which on July 11, 2022, he told A.A. "right now we don't have a specific plan for the basement" and "we will probably turn the basement into a big game room when/if we move to the house." M.Z. also stated that on August 8, 2022, A.A. wrote "We have an agreement that I would vacate both units at 922 Guildwood Blvd, London Ontario by November 30, 2022".
15. M.Z. testified he had a phone call with A.A. at which he learned A.A. had moved into the basement. He also learned that A.A.'s stepdaughter had moved into the basement, all without his permission.
16. M.Z. referred to an email sent to A.A. on August 11, 2022 in which he wrote in part:

I agreed that you vacate the house earlier than November 30 just to make your move easier for you. I assumed that you will pay \$3,300/monthly until you leave the house. Why did I assume so? Because vacating simply means that you leave the house completely. It does not mean moving into the basement. You never told me that you wanted to move to the basement. In fact, I'm still so upset and disappointed that you did it without telling me first. This is not the first time you do something this important without telling me first (remember installing a gas stove without telling me?)

17. M.Z. stated he offered that A.A. could remain in the basement until November 30, 2022 however he would have to completely vacate the main floor and the monthly rent would be \$1,400.00. He further stated he would provide \$3,300.00 to A.A. when he vacated the basement on November 30, 2022.
18. M.Z. referred to an email sent by A.A. to him on August 27, 2022 in which A.A. wrote

"I am moving out as per the Form N11, Agreement to End the Tenancy "ON OR BEFORE 30/11/22"" I am COMPLYING WITH YOUR REQUEST. Which means that I shall move our [sic] ASAP if I can. But definitely by 30/11/2022 as agreed to. However, unless you REFUND to me the RENTs OVER PAID (\$3,893.33, And only HOLD the RENT till NOVEMBER [sic], THEN I SHALL STAY for the RENT PAID. Which means until end of April 2021".

Analysis

19. Based on the evidence before me, I find that the agreement is valid, and the termination order should not be set aside. I say this for the following reasons:
- In all the parties' discussions and correspondence, the Landlord was forthright and consistent about the intended rental unit. He was genuine in his testimony that the basement was excluded and he was renting only the main floor of the house.
 - The Landlord does not appear to have circumvented the process for evicting for "landlord's own use". The Landlord provided the Tenant with five months notice of his intention to move and reside in the house.
 - The Tenant did not sign the N11 under duress. The Tenant testified that no one forced him to sign the N11 and the evidence shows the Tenant confirmed with the Landlord that he would vacate the house completely on November 30, 2022.
 - The Tenant is very articulate in his correspondence to the Landlord. He speaks of being a landlord for over 30 years and expresses his knowledge of tenant's rights and his understanding of the Residential Tenancies Act, 2006 (the 'Act').
 - The Landlord and the Tenant did not have a meeting of the minds to rent two separate units. The Tenant entered into a tenancy agreement for the main floor unit and on his own volition converted the basement to a second rental unit as he did not want anyone else living in the basement. The Tenant never informed the Landlord it was his intention to move into the basement and vacate the main floor after signing the N11. This was done without the Landlord's permission.
20. Section 2(1) of the Act defines a tenancy agreement as: a written, oral, or implied agreement between a tenant and a landlord for occupancy of a rental unit and includes a licence to occupy a rental unit.
21. A tenancy agreement is a valid contract whether it is written, oral, or implied. The general principles of contract law prohibit any party to a contract to unilaterally change the terms and conditions of the agreement. The Landlord and the Tenant entered into an agreement in which the Tenant would occupy the main floor of the house, the basement was a noted exclusion in the rental listing and the Tenant was fully aware of this.
22. Based on the evidence before me and on a balance of probabilities, the Tenant was aware he was renting only the main floor at the commencement of the tenancy but because he did not want anyone living in the basement, he arranged with the Landlord to use the basement as his own space. He set out a plan to convert the basement into a livable space, possibly for his step-daughter, but after signing the N11, made a conscience decision to claim he rented two separate units and moved into the basement without notifying the Landlord.

23. For the reasons above, the Tenant's motion to set aside the *ex parte* eviction order shall be denied.
24. The stay shall be lifted May 31, 2023. The Tenant will need some time to secure new housing. However, it is not appropriate to extend this date any further as the Landlord is prejudiced by any further delay.

It is ordered that:

1. The motion to set aside Order LTB-L-064808-22, issued on November 17, 2022, is denied.
2. The stay of Order LTB-L-064808-22, is lifted on May 31, 2023.
3. Order LTB-L-064808-22 is unchanged.

April 26, 2023

Date Issued

15 Grosvenor Street, Ground Floor Toronto
ON M7A 2G6

Susan Priest

Member, Landlord and Tenant Board

If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.