



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

Citation: Dobbin v Pulker, 2023 ONLTB 30937

Date: 2023-04-13

File Number: LTB-L-082127-22-SA

In the matter of: 20 Richland Crescent
Etobicoke, ON M9C 4C2

Between: Kevin Dobbin Landlords
Tracey Dobbin

And

Fiona Pulker Tenants
Lance Pulker

Kevin Dobbin and Tracey Dobbin (the 'Landlord') applied for an order to terminate the tenancy and evict Fiona Pulker and Lance Pulker (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-082127-22, issued on February 13, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-082127-22.

The motion was heard by videoconference on March 8, 2023.

The Landlords, the Landlords' Legal Representative Warren Rigby, Kyle Dobbin, Ruby Shah, Roslyn Bacon and David Bacon attended the hearing on behalf of the Landlords. The Tenant Fiona Pulker ('FP'), the Tenants' Legal Representative Scott Hedden and the Tenant's daughter Ashley Pulker attended the hearing on behalf of the Tenants.

Determinations:

1. The Landlords and Tenants both signed an N11 notice of termination to terminate the tenancy as of December 31, 2022.
2. The Tenants filed a motion to set aside order LTB-L-082127-22 on February 16, 2023, alleging that they felt pressured into signing the N11.
3. Further, the Tenants allege that the Landlords should have served them an N12 notice of termination, as they intended to move their son and his girlfriend into the unit. The Tenants also allege that due to circumstances beyond their control, they were unable to find a new place to live.

4. FP testified that the Landlord Tracey Dobbin ('TD') had told her that she had contacted the Landlord and Tenant Board requesting information regarding the ending of the tenancy. FP testified that the Landlord was told to have her sign an N11 notice of termination.
5. FP alleges that she had signed the N11 under duress, and later learned that the Landlord should have served her with an N12 notice as the Landlords intended to have their son move into the unit.
6. FP further alleges that she attempted to pay the Landlords rent for January, however the Landlords refused the payment believing it would be improper to take their rent after they had agreed to end the tenancy.
7. The Tenants were to move to either a house that their daughter had obtained, or a cottage that the family had also come into however, due to a fire and a flood, the Tenants could not move into either of those options.
8. TD testified that the Tenants have been in the unit for 6 years and that their relationship had been very good up until the end of December when she had learned that the Tenants did not intend on vacating the unit as agreed.
9. TD testified that the Tenants have been telling her since November of 2021 that they had intended on vacating the unit to move into their daughter's house. TD testified that the Tenants had showed her pictures of the house, and that the Tenants had advised her at that time that they would be vacating the unit by summer of 2022.
10. On October 29, 2022, a text message was sent from the Landlords to the Tenants advising them that their son and girlfriend intend on living with one another and that with the Tenants planning on moving, they intend to move into the unit. The text message went on to request a meeting to discuss a move-out date. The Tenants responded that same date, agreeing to a meeting with the Landlords the week after.
11. On November 7, 2022, TD had contacted the Board and received her advice regarding ending the tenancy. TD phoned the Tenants, and a recording of this phone call was entered into evidence. FP stated in that phone call that the Tenants intend on moving by the end of December, or earlier and that the Landlord's son's girlfriend could give her notice for her rental unit.
12. As outlined above, the Tenants were unable to move into either of their prospective properties as a result of a fire and a flood. The Tenants requested an extension from the Landlords, which was granted until January 27th, 2023. The Tenants did not vacate the unit by that date.

Review & Analysis

13. An agreement to terminate is a binding contract. Absent a compelling reason to set the agreement aside, I believe the Board should enforce agreements entered into by landlords and tenants. Compelling reasons to set aside such an agreement would include, but is not limited to, things like duress, fraud or negligent misrepresentation; or mistake of fact or law.

14. The Tenants allege they signed the N11 agreement under duress. The reason FP states the Tenants were under duress was because TD attended at the unit the same date TD had discussed the N11 with her.
15. On the basis of the evidence before me, I am not satisfied that the Tenants were under duress when they signed the N11. Having reviewed the phone call recording of FP and TD discussing the issue, it was clear that there was an understanding between the parties regarding the tenancy that was both comfortable and amicable.
16. Further, while the Tenants never outlined the issue in their set aside motion, they allege that the Landlords should have served them an N12 notice of termination, rather than an N11. This is because the Landlords had told the Tenants that their son and his girlfriend intend on moving into the unit.
17. While that normally may be the case, in this instance I disagree. The Tenants had been telling the Landlords since at least November 2021 that they had intended on vacating the unit. There was never any evidence provided showing any mention of the Landlords' intention of moving in their son until their text message sent to the Tenants on October 29, 2022.
18. Further, based on the phone call recording, FP had agreed amicably to end the tenancy by the end of December or earlier. This intention was made on the precipice that the Tenants had intended to move out of the unit for some time.
19. Section 77(8)(b) of the *Residential Tenancies Act, 2006* (the 'Act') states that the order be set aside only if the Board is satisfied, having regard to all the circumstances, that it would not be unfair to do so. Based on the evidence and submissions before me, I am satisfied that it would be unfair to set aside the order in these circumstances.
20. That said, the Tenants have had issues finding a new unit. The Landlords' son and girlfriend are currently residing with the Landlord. Due to the issues faced by the Tenant, the stay of the order will be lifted as of May 31, 2023.

It is ordered that:

1. The motion to set aside Order LTB-L-082127-22, issued on February 12, 2023, is denied.
2. The stay of Order LTB-L-082127-22 is lifted on May 31, 2023.
3. Order LTB-L-082127-22 is unchanged.

April 13, 2023

Date Issued

Jagger Benham
 Member, Landlord and Tenant Board

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