



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

Citation: Brothers v Melo, 2023 ONLTB 29510

Date: 2023-04-13

File Number: LTB-L-004838-23-SA

In the matter of: LOWER B, 214 EWART ST
STRATHROY ON N7G4G6

Between: Jim Brothers Landlord

And

Melanie Melo Tenant

Jim Brothers (the 'Landlord') applied for an order to terminate the tenancy and evict Melanie Melo (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-004838-23, issued on February 16, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-004838-23.

The motion was heard by videoconference on March 23, 2023. The Landlord, the Landlord's legal representative, D. Price, and the Tenant attended the hearing.

Determinations:

1. The Landlord and Tenant signed an agreement to terminate the tenancy as of December 31, 2022. However, the parties dispute the validity of the agreement.

The Tenant's Evidence

2. The Tenant submits that the Landlord misrepresented the agreement. On November 20, 2022, the Tenant left for vacation and did not return to her unit until December 15, 2022. When she returned, she attended the Landlord's home as the locks to the rental unit had been changed.
3. At the meeting, the Landlord brought up the outstanding arrears. The Tenant told the Landlord that she had brought her own washer and dryer to the rental unit, and she would leave the washer and dryer in exchange for the Landlord waiving the outstanding arrears. On a piece of paper, the Landlord wrote at the bottom that the Landlord agreed to accept the washer and dryer as full payment for outstanding rent for November 2022. Both parties signed. The Tenant states that she assumed she was only signing to the exchange of the washer and dryer. The Landlord then turned over the page and she realized it was an agreement to terminate the tenancy.

4. The Tenant also submits that she thought she had no option but to agree to terminate the tenancy as the Landlord had keys to her rental unit, she was 7 months pregnant, and she had nowhere else to go. Furthermore, the Tenant states that the Landlord put a 'For Sale' sign on the lawn to scare her.

The Landlord's Evidence

5. The Landlord submits that he did not misrepresent the N11. On December 15, 2022, the Tenant attended his home to pick up the key to her rental unit. The locks had been changed as the Landlord had to gain access while the Tenant was away due to an emergency in the rental unit.
6. The Tenant went to the Landlord's office and offered the washer and dryer in exchange for arrears of rent. She stated that she could not handle the rent anymore as a single mother as her partner left. She said she needed to, "get out fast." The Landlord then told her that they could enter an agreement to terminate the tenancy. He printed out the N11 Agreement and asked her if she wanted to terminate the tenancy. She said yes. The Landlord proposed to end the tenancy at the end of December so that she did not have to pay December rent and they could use the last month's rent deposit. The Landlord put a note on the N11 regarding the agreement about the washer and dryer. The parties then signed the agreement. The Tenant left the Landlord's home with a key to the rental unit and a copy of the N11.
7. In response to the Tenant's allegation that the Landlord put up a 'For Sale' sign to scare her, the Landlord denied this allegation. The Landlord states that his realtor put up the sign to determine if there were any inquiries in the beginning stages of marketing and was not intended to intimidate or scare the Tenant.
8. When the Tenant was asked about the conversation regarding 'getting out fast', she stated she thought two weeks to vacate was better than no time at all. The Tenant also submitted that the Landlord's evidence was inconsistent as the Landlord was not clear on whether he or the Tenant proposed the termination date.

Law and Analysis

9. Section 77 of the *Residential Tenancies Act, 2006* (the 'Act') states that a landlord, may, without notice to the tenant, apply to the Board for an order terminating the tenancy and evicting the tenant if the landlord and tenant have entered an agreement to terminate the tenancy.
10. I do not find that the Landlord misrepresented the agreement to terminate the tenancy. I prefer the Landlord's evidence that the Tenant agreed to terminate the tenancy for the date specified before she signed the agreement.
11. I make this conclusion because the Tenant's evidence was contradictory. The Tenant stated she thought that they were only agreeing for the exchange of the washer and dryer *and* that she felt she had no option but to agree to terminate the tenancy. I find it unlikely that the

Tenant did not know what they were agreeing to as her evidence was that she believed she had no option but to agree to terminate the tenancy.

12. In addition, the N11 that the Tenant signed that she states she assumed was an agreement for the washer and dryer said at the bottom, "Page 2 of 2." The N11 is a Board-generated template form which at the top styles itself as an "Agreement to End the Tenancy." In its detailed contents, the N11 repeatedly references this term. It also refers to the tenancy-ending consequence of a tenant entering into such an agreement and that a tenant cannot be required to agree. Even if the Landlord misidentified the purpose of the form, it would have taken the briefest of glances on "Page 1 of 2" for its true meaning to have been understood.
13. I also considered the Tenant's claim that she felt she had no option but to sign the N11 agreement. I considered that the Landlord had the keys to her rental unit and that the Landlord put up a 'For Sale' sign in front of the rental unit. I note that duress, by its legal definition, generally involves inducement by way of unlawful threats or improperly persuasive conduct.
14. In *Stott v. Merit Investment Corp.*,¹ Finlayson J.A. 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.*).
15. I do not find any of the Landlord's conduct was unlawful or met the high threshold of coercion of the will. The Tenant has not persuaded me that the Landlord was not going to give her replacement keys if she did not sign the N11. Further, there was no evidence that the Landlord actually put the rental unit up for sale or communicated to the Tenant that she was required to move if the unit was sold.
16. Having found that the parties entered an agreement to terminate the tenancy, I turn now to whether it would be unfair to set aside the ex parte order.
17. *Pinto v. Regan and White v. Regan*² requires me to grant the motion if satisfied it would not be unfair to make that order. To make that determination, the Board must "have [...] regard to all of the circumstances", which means the factual matrix that provides the context in which the dispute between the parties arose in its widest sense. I have considered all of the circumstances that led to the signing of the N11 as discussed above. I find that the parties entered into the agreement to terminate the tenancy after discussing terms and conditions and as such, it would be unfair to set aside the order.

¹ 1988 CanLII 192 (ON CA), <<https://canlii.ca/t/1p77x>>.

² 2021 ONSC 5502 (CanLII), <<https://canlii.ca/t/jhlftr>>.

18. However, I find it appropriate to postpone lifting of the stay. The Tenant stated that she requires at least one month to vacate the rental unit. She has a young child and a pet. In consideration of the foregoing, I find it appropriate to postpone lifting of the stay to May 31, 2023. This will provide the Tenant with some time to organize her move. The Landlord did not disclose any prejudice to the Landlord in postponing termination of the tenancy.

It is ordered that:

1. The motion to set aside Order LTB-L-004838-23, issued on February 16, 2023, is denied.
2. The stay of Order LTB-L-004838-23, is lifted on May 31, 2023.
3. Order LTB-L-004838-23 is unchanged.

April 13, 2023

Date Issued

Camille Tancioco

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.