



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

Citation: Sidhu v Adam, 2023 ONLTB 27808

Date: 2023-04-07

File Number: LTB-L-001040-23-SA

In the matter of: SEMI-DETACHED, 58 Washburn Road East
Brampton Ontario L6P3V6

Between: Gurmail Sidhu Landlord

And

Abdullahi Adam Tenant

Gurmail Sidhu (the 'Landlord') applied for an order to terminate the tenancy and evict Abdullahi Adam (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-001040-23, issued on January 18, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-001040-23.

The motion was heard by videoconference on February 15, 2023.

The Landlord's legal representative, Karen Byfield, and the Tenant attended the hearing. Ubah Adam, the Tenant's daughter, attended the hearing as a witness for the Tenant.

Determinations:

1. On December 25, 2022, the Landlord and the Tenant signed an agreement to terminate the tenancy as of March 31, 2023.
2. On January 18, 2023, the Board issued order LTB-L-001040-23 terminating the tenancy.
3. The Tenant filed a motion to set aside the order.
4. In his motion the Tenant submitted that he had no intention to move out of the rental unit until he was approached by the Landlord. The Tenant signed the N11 agreement to terminate the tenancy because the Tenant lost his job and was in arrears of rent.
5. By way of background, the Tenant has been residing in the rental unit with his family for 11 years. The Landlord and the Tenant had a good relationship throughout the tenancy. The Tenant has become unemployed throughout October 2022, November 2022 and December 2022 and was struggling to make ends meet. It was only after the Tenant ran

into financial difficulties that the Landlord approached him with the N11. The Tenant started a new job on January 19, 2023.

6. Pursuant to section 77(8)(b) I have to consider all the circumstances in determining whether or not it would not be unfair to set aside the eviction order.
7. I take guidance from the case of *Metropolitan Housing Authority v. Bowler*, [2002] O.J. No.1729 (Ont. Div. Ct.) where after considering all the circumstances an agreement to terminate was set aside because the Tenant signed the agreement to terminate when she was told there was distinct possibility of criminal charges being laid if she did not sign the agreement.
8. I have also considered all the circumstances pursuant to *Pinto v. Regan and White v. Regan*, 2021 ONSC 5502, including the fact that the Tenant had no intention of terminating the tenancy prior to the Landlord approaching her with the N11 agreement. The Tenant was told that if she did not sign the agreement and did not pay rent on time and in full, the Landlord could serve her with an N4 Notice of Termination and file an application for eviction.
9. I have also considered the validity of the N11 under s. 202 of the Act. Pursuant to section 202, in making findings on an application, the Board shall ascertain the real substance of all transactions and activities relating to a residential complex or a rental unit and the good faith of the participants and in doing so.
10. I find that the real substance of signing the N11 agreement, was to obtain possession of the rental unit because the Tenant failed to pay rent. The Act, however, sets out the due process in circumstances where tenants do not pay rent. If tenants fail to pay rent, they may be served with a Notice of Termination, which they can void in 14 days by paying the rent. The tenants have two more opportunities to void eviction even after a landlord files an application for arrears and eviction with the Board.
11. By signing the N11 agreement, the Tenant gave up all the above remedies available to him under the Act, and in essence, enabled the Landlord to short-circuit the Act.
12. In conclusion, I have considered all of the disclosed circumstances pursuant to section 77(8)(b) and I am satisfied, that it would not be unfair to set aside the order. I say this because the Tenant did not have an intention to vacate the rental unit before he signed the N11 agreement, and the N11 was signed as an alternative to due process under the Act. By signing the N11 the Tenant was denied access to remedies available to her under the Act.

It is ordered that:

1. The motion to set aside Order LTB-L-001040-23, issued on January 18, 2023, is granted.
2. Order LTB-L-001040-23, issued on January 18, 2023, is set aside and cannot be enforced.

May 12, 2023
Date Issued

Jana Rozehnal
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.

2023 ONLTB 27808 (CanLII)