



Order under Section 77 Residential Tenancies Act, 2006

Citation: VINCENT v MACDONALD, 2023 ONLTB 28788

Date: 2023-03-31

File Number: LTB-L-076560-22

In the matter of: B, 15 ELGIN AVE WEST
RENFREW ON K7V3T6

Between: PHILLIP VINCENT Landlord

And

KATHERINE MACDONALD Tenant

PHILLIP VINCENT (the 'Landlord') applied for an order to terminate the tenancy and evict KATHERINE MACDONALD (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy. (L3 application)

A hearing was held to consider this L3 application. The hearing was held by videoconference on January 16, 2023.

The Landlord and the Tenant attended the hearing. The Tenant consulted with Tenant Duty Counsel prior to the commencement of the hearing.

Determinations:

1. In summary, I find the Landlord's L3 application is a successful application, and therefore the grounds for termination of the tenancy have been met. The reasons for this determination are provided below.
2. The Landlord testified as to the circumstances in the tenancy leading to the N11 agreement to terminate, which he declared that he and the Tenant signed on September 30, 2022.
3. The Tenant testified that she never signed the N11 agreement to terminate, claiming that the signature on the N11 document was not hers.
4. I asked the Landlord to explain his side of the story in more detail. He referred to text messages exchanged between the parties just before September 30, 2022, which indicate the parties were planning to meet on September 30, 2022. The Landlord testified there were rent arrears and the parties had agreed that if the tenancy were to end on November 30, 2022, that he would waive all arrears owing and not try to collect from her. He referred to a multi-paged side document that was sent as part of the L3 application filing, which includes an N4 arrears

notice and which shows the Landlord's signed undertaking for a November 30, 2022 termination and the waiving of arrears.

5. The Landlord testified he met the Tenant at the rental unit sometime between 9:30 am to 10:15 am on September 30th. He stated the Tenant met him at the front door and invited him into the unit to look at a leak that had recently manifested in the back bedroom. The Tenant's son was not present. The Landlord stated that after inspecting the maintenance issue, he filled in the N11 form agreement according to their discussions and asked the Tenant to sign it. He swore before me that he personally watched as the Tenant signed the N11.
6. The Landlord testified the rent arrears at the time were \$3,600.00, but as of the date of this hearing, the arrears have increased to \$8,600.00.
7. The Landlord also confirmed that he had given the Tenant a different notice, an N12 notice, which had been separately served on the Tenant. He testified he revoked that N12 notice once he was satisfied the parties had mutually agreed to terminate the tenancy. As well, the Landlord confirmed he served the Tenant with an N4 arrears notice in September 2022.
8. The Tenant declared that she never saw the Landlord on September 30, 2022. She testified that had to be at work between 10:00 am and 11:00 am daily and that would have been the case on that day. Her 14-year old son would have left the rental unit at about 7:30 am for school on September 30, 2022, so she testified that there was no one home to have greeted the Landlord.
9. The Tenant confirmed that the Landlord had given her a separate N12 notice.
10. It was obvious to me that one of the parties was not telling the truth about what happened on September 30, 2022. It could have been that someone's memory was simply imperfect, so that testimony was given in earnest but was simply inaccurate. It could have been that someone was intentionally lying.
11. I was close to making a determination on the merits of the L3 application, but wanted a little more information to determine the most likely thing that had happened on September 30, 2022. I directed the Landlord to submit – post-hearing- a copy of the originally signed leasing documents, so that I could review them for the signatures placed thereupon. The purpose of the post-hearing submission request was to provide me with one more document that contains the Tenant's short-form signature on it so that I could compare it with the documents already in evidence.
12. I confirm that the Landlord submitted a post-hearing submission on January 19, 2022, before the January 20, 2022 deadline that I had set for him. In that post-hearing submission, I confirm that the Landlord submitted a 'pdf' copy of the Rental Application, that was signed by the Tenant on October 30, 2019.
13. I note for the record that the Landlord included more evidence than just the leasing documents I had asked him to provide. To be clear for this order, I did not request that extra information and I have not considered anything else from that post-hearing submission to arrive at this order.

14. Based mainly upon the evidence provided with the L3 application and the side documents, and supported by the post-hearing Rental Application document, I find that on a balance of probabilities, the Landlord and Tenant entered into an agreement to terminate the tenancy as of November 30, 2022.
15. I say this because the Tenant's signatures on the N11 form and on the Rental Application look quite similar to one another – they were both in a shorter form signature format -- and I am of the view that anyone looking at those signatures could reasonably conclude they were written by one and the same person. Having stated this, I also submit that I am not a graphologist or a hand-writing expert, and so my determination is not solely based on this analysis.
16. Apart from the “he said, she said” conflicting testimonies, the only other hard evidence provided during the proceedings were the N4 notice for arrears, and the September 30, 2022 signed undertaking by the Landlord.
17. On a balance of probabilities, the N4 and signed side-undertaking support the Landlord's testimony, so that they tip the balance of probability in favour of his version of events in respect of September 30, 2022. It seems quite likely that the parties had been discussing the increasing arrears situation which led to them to discuss a mutual termination of the tenancy, so that the Tenant could move out without having the Landlord pursue her afterward through collections.
18. The Tenant, on the other hand, provided no real evidence other than outrightly denying she ever met the Landlord on September 30, 2022, or that she ever signed the N11 form.
19. While I confirm the Tenant's testimony has some value, it is only suggestive of what she states is true and certainly it is far from conclusive. Effectively, I am given to consider her conflicting testimony against that of the Landlord, and in this case I find the Landlord provided a more persuasive case.
20. My finding is consistent with case law authority that relates to two parties who offer conflicting testimonies -- which is often referred to as a “he said, she said” case. As stated by Cory, J. in a well-known criminal case before the *Supreme Court of Canada, R. v. W.(D.), 1991 CanLII 93 (SCC), [1991] 1 S.C.R. 742*, “one must determine if, having considered the evidence as a whole, the burden of proof has been met by the party with that burden”. Here, it is evident to me the Tenant did not meet that burden whereas the Landlord did.
21. At the end of the hearing, I asked the parties to submit any circumstances they have in respect of a possible termination/eviction. I have considered all of the disclosed circumstances in accordance with subsection 83(2) of the *Residential Tenancies Act, 2006* (the 'Act'), and find that it would be unfair to grant relief from eviction pursuant to subsection 83(1) of the Act.

It is ordered that:

1. The tenancy between the Landlord and Tenant is terminated.

2. The Tenant must move out of the rental unit on or before Apr 11, 2023.
3. If the unit is not vacated on or before Apr 11, 2023, then starting Apr 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
4. 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 Apr 12, 2023.

March 31, 2023

Date Issued

15 Grosvenor Street, Ground Floor
Toronto ON M7A 2G6

Alex Brkic
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.

In accordance with section 81 of the Act, the part of this order relating to the eviction expires on October 12, 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.