



Order under Section 77 Residential Tenancies Act, 2006

Citation: Xiang v Behmanesh, 2023 ONLTB 16564

Date: 2023-02-28

File Number: LTB-L-077194-22

In the matter of: 115 Edward Jeffreys Avenue
Markham ON L6E1W1

Between: Ming Xiang Landlord

And

Shireen Behmanesh Tenant

Ming Xiang (the 'Landlord') applied for an order to terminate the tenancy and evict Shireen Behmanesh (SB) (the 'Tenant') because the Tenant entered into an agreement to terminate the tenancy.

On January 6, 2023, this application was directed to hearing because additional clarifying information was required.

The application was heard by video conference on January 19, 2023.

The Landlord, the Landlord's Representative, J. Zhu and the Tenant attended the hearing. Henry Zhao, Realtor, was a witness for the Landlord.

Determinations:

1. The N11 Form signed on September 28, 2022, is a valid agreement. The L3 application properly names only Shireen Behmaneh as Tenant.
2. The tendency agreement identifies another Tenant, Christopher Ronald Martin (CRM), but I find he was not in possession of the rental unit on or after May 28, 2022, because of the following:
3. On May 28 2022, the Tenant texted HZ, the Landlord's Agent, that CRM vacated the unit and she was going to move out on June 30, 2022 because she couldn't afford rent. On September 28 2022, the Tenant again informed HZ that CRM was not living in the unit as corroborated by her text that states, "he has disappeared completely".
4. Having received the Board's direction dated January 6, 2023 on point, I was not prepared to accept the Tenant's testimony that CRM moved back into the unit and couldn't attend the hearing because he was working. Since available and expected evidence from CRM was not provided by either testimony, declaration, affidavit or any other written document, I gave more weight to text communication written at the time of the agreement. As such,



there was not enough evidence to connect CRM to the unit on or after May 28, 2022 and therefore I'm satisfied the N11 is valid agreement to end the tenancy.

5. There's no dispute the Tenant signed the N11 agreement on September 28, 2022. The Landlord and Tenant entered into an agreement to terminate the tenancy as of December 31, 2022.
6. The N11 Notice was not signed under duress and the topic of ending the tenancy appears to be initiated by the Tenant having first given an invalid notice that she was moving out on June 30, 2022. Despite the incentive of two months rent free when she signed the N11 agreement, on a balance of probability the Tenant did not vacate due to difficulty finding alternate accommodations.
7. The Tenant cannot unilaterally change the agreement to terminate the tenancy, therefore the Landlord's application for eviction is granted.
8. 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. The Tenant has had ample find alternate accommodations.

It is ordered that:

1. The tenancy between the Landlord and Tenant is terminated. The Tenant must move out of the rental unit on or before February 28, 2023.
2. If the unit is not vacated on or before March 11, 2023, then starting March 12, 2023, the Landlord may file this order with the Court Enforcement Office (Sheriff) so that the eviction may be enforced.
3. 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 March 12, 2023.

February 28, 2023
Date Issued

Sandra Macchione
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.

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