



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

**Citation:** RZEPKA-BISSESSAR v ADEN, 2023 ONLTB 21121

**Date:** 2023-02-23

**File Number:** LTB-L-075317-22-SA

**In the matter of:** 4, 750 ERINBROOK DRIVE  
KITCHENER ONTARIO N2E2S7

**Between:** RENATA RZEPKA-BISSESSAR Landlord

**And**

FARHIA MOHAMED ADEN Tenant

RENATA RZEPKA-BISSESSAR (the 'Landlord') applied for an order to terminate the tenancy and evict FARHIA MOHAMED ADEN (the 'Tenant') because the Tenant gave notice to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-075317-22, issued on January 10, 2023. This order was issued without a hearing being held.

The Tenant filed a motion to set aside order LTB-L-075317-22.

The motion was heard by videoconference on February 1, 2023.

The Landlord, the Tenant, and the Tenant's legal representative, Rob Nixon, attended the hearing. The Tenant's daughter, Lubna Mumin (LM), attended the hearing as a witness for the Tenant. The Tenant's other daughter, Lina Mumin, translated for the Tenant.

### **Determinations:**

1. The Tenant's motion to set aside claims that the Landlord approached the Tenant, who does not speak or read English, on September 28, 2022 to get the Tenant to sign the notice to terminate the tenancy. The motion further states that the Tenant believed the Landlord intentionally approached the Tenant when the Tenant was alone and no one was available to translate the document for her.

2. The WhatsApp communications submitted into evidence between the Landlord and Nema Sulub (NS), the Tenant's case manager from Reception House, a community-based settlement service agency, contradict the information in the Tenant's set aside motion. These communications indicate that NS contacted the Landlord on September 26, 2022 stating that LM told NS that notice to terminate the tenancy had been provided to the Landlord in July 2022. There is then communication back and forth between the Landlord and NS wherein it is clarified that notice was not provided and the Landlord provides NS with a blank notice of termination form. NS indicates that she will explain the form to the Tenant and assist the Tenant with completing the form. NS then sends the completed notice to terminate to the Landlord on September 29, 2022.
3. The Tenant acknowledged at the hearing that she signed the notice of termination with NS rather than the Landlord and that NS speaks the same language as the Tenant.
4. The Tenant then testified that NS did not explain the notice of termination to her and that she did not understand what she was signing.
5. I did not find this to be credible for two reasons. Firstly, the stark contrast between the narrative provided in the motion to set aside and what became evident at the hearing undermined the Tenant's overall credibility. Secondly, the Tenant ought to have called NS as a witness if it was the Tenant's position that NS did not explain the document to the Tenant. I draw an adverse inference from the Tenant's failure to do so.
6. I find the WhatsApp communications between the Landlord and NS to be the most reliable evidence with respect to how the notice of termination came into being and how it was executed. It is clear from these communications that the desire to terminate the tenancy originated from the Tenant.
7. Although the Tenant asked me to consider the Landlord's text to LM dated August 29, 2022, wherein the Landlord said that the Tenant could stay as long as she needed to, I did not find this text to be significant. Firstly, subsection 3(1) of the Act states that the Act applies despite any agreement or waiver to the contrary. Secondly, the Landlord reminds the Tenant in that very same text message that the Tenant will be obligated to provide a specific termination date "as per the Ontario Landlord and Tenant Board" when the Tenant ultimately decides to terminate the tenancy.
8. In light of the above, I am satisfied that the Tenant gave the Landlord notice to terminate the tenancy effective November 30, 2022.
9. After considering all of the circumstances, I find that it would be unfair to set aside order LTB-L-075317-22.
10. The stay of order LTB-L-075317-22 is lifted on March 31, 2023. I find it appropriate to delay lifting the stay because the Tenant has not yet found a new place to live and faces language and other barriers in obtaining new housing. The financial prejudice to the Landlord related to delay was ameliorated to some extent by the payment made to the Landlord during the hearing.

**It is ordered that:**

1. The motion to set aside Order LTB-L-075317-22, issued on January 10, 2023, is denied.

2. The stay of Order LTB-L-075317-22, issued on January 10, 2023, is lifted on March 31, 2023.
3. Order LTB-L-075317-22 is unchanged.

**February 23, 2023**  
**Date Issued**

---

Richard Ferriss  
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.