



**Order under Section 77
Residential Tenancies Act, 2006**

Citation: NELLES v AKEN, 2023 ONLTB 20744

Date: 2023-02-16

File Number: LTB-L-068669-22

In the matter of: 310, 737 DEVERON CRES
LONDON ONTARIO N6N1G4

Between: NEXMIL PROPERTY MNGMT Landlord
STEPHEN NELLES

And

IMAN AKEN Tenants
NOAH AAIDAR

NEXMIL PROPERTY MNGMT and STEPHEN NELLES (the 'Landlord') applied for an order to terminate the tenancy and evict IMAN AKEN (IN) and NOAH AAIDAR (NA) (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

This application was heard by videoconference on January 30, 2023.

Only the Landlord Stephen Nelles (SN) attended the hearing.

Determinations:

1. An application to terminate a tenancy because the tenant(s) agreed to terminate the tenancy is normally done *ex parte*; that is, there is no hearing. In this case, the application was sent to a hearing because there are two Tenants but only one of the Tenants signed the N11 agreement to terminate the tenancy.
2. The Tenant who signed the N11 agreement is IA. At the hearing the Landlord SN testified that when IA signed the N11 agreement, IA told SN that the Tenant NA had already moved out. SN testified that he had not seen NA at the property since September 2022. Based on SN's uncontested testimony, I find, on a balance of probabilities, that NA moved out of the rental unit before IA signed the N11 agreement. Normally where there are two tenants (assuming a joint tenancy), both tenants must agree to end the tenancy. In this case NA's agreement is irrelevant because he had moved out prior to IA's agreement to terminate the tenancy.
3. SN testified that as of the date of hearing IA was still living in the rental unit.

4. Based on the Landlords' uncontested evidence, I find that the Landlords and the Tenant IA entered into an agreement to terminate the tenancy as of November 1, 2022 and the

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Tenant IA did not move out of the rental unit by the termination date set out in the agreement.

5. Since the Tenant IA did not move out of the rental unit by the termination date, the Landlords were required to file the application to obtain vacant possession. Therefore, the Tenants are responsible for paying the Landlords for the \$201.00 application filing fee incurred.

It is ordered that:

1. The tenancy between the Landlords and Tenants is terminated. The Tenants must move out of the rental unit on or before February 27, 2023.
2. If the unit is not vacated on or before February 27, 2023, then starting February 28, 2023, the Landlords 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 Landlords on or after February 28, 2023.
4. The Tenants shall pay to the Landlord \$201.00, for the cost of filing the application.
5. If the Tenants do not pay the Landlords the full amount owing on or before February 27, 2023, the Tenant will start to owe interest. This will be simple interest calculated from February 28, 2023 at 5.00% annually on the balance outstanding.

February 16, 2023

Date Issued

Renée Lang

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 August 31, 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.