



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

Citation: TRIDENT PROPERTY MGMT SWO v HAYWARD, 2023 ONLTB 17597

Date: 2023-01-30

File Number: LTB-L-064784-22

In the matter of: 10, 3260 SINGLETON AVENUE
LONDON ON N6L0E7

Between: TRIDENT PROPERTY MGMT SWO Landlord

And

MICHAEL HAYWARD Tenants
SARIKA HAYWARD

TRIDENT PROPERTY MGMT SWO (the 'Landlord') applied for an order to terminate the tenancy and evict MICHAEL HAYWARD and SARIKA HAYWARD (the 'Tenants') because the Tenants entered into an agreement to terminate the tenancy.

The Landlord's application was resolved by order LTB-L-064784-22 issued on November 18, 2022. This order was issued without a hearing being held.

The Tenants filed a motion to set aside order LTB-L-064784-22.

This motion was heard by videoconference on December 15, 2022.

The Landlord's legal representative, Robert Rose, the Landlord's property manager, Devon Bell, and the second-named Tenant attended the hearing.

Determinations:

1. The Landlord and Tenants entered into an agreement on July 26, 2022, to terminate the tenancy effective September 30, 2022.
2. The Tenants are spouses. The second-named Tenant, 'SH', says that this agreement is invalid because she was coerced into signing the agreement. For the following reasons, I disagree.
3. Although SH says she was coerced into signing the agreement, the bulk of her testimony focused on how her husband allegedly forced her to sign the agreement. SH does not allege that the Landlord forced her to sign the agreement and there is no evidence before me that the Landlord even spoke to the Tenants prior to them signing the agreement. For this reason, I am satisfied that the parties entered into a valid agreement to terminate the tenancy and this agreement must be enforced.



The Tenants' Motion

4. As I am satisfied that the parties entered into a valid agreement to terminate the tenancy, the next issue before me is whether it would be unfair in all the circumstances to set aside the eviction order. For the following reasons, I find that it would be unfair to set aside the eviction order.
5. First, I have considered that SH has lived in the rental unit since 2019 along with her husband and her 17 year old son who attends school in the area. There is no evidence before me that either SH or her son have any physical or psychological challenges which would negatively impact their ability to find a new place to live.
6. As mentioned above, the focus of SH's testimony is that her husband allegedly forced her to agree to terminate the tenancy because he was ending their relationship and moving out of the rental unit. However, SH failed to provide sufficient evidence to establish that her husband forced her to sign the agreement.
7. I say this because SH failed to promptly contact the Landlord to tell them about her concerns regarding the agreement or have any discussion about her reluctance to terminate the tenancy. In fact, SH did not email the Landlord until September 22, 2022, and even then, she did not explain that her husband forced her to sign the agreement but instead told the Landlord that she had been unable to find a new place to live. Although there is no dispute that SH called the Landlord to discuss the situation shortly after she signed the agreement, the Landlord says that she told SH that she would only correspond with her in writing due to the sensitive nature of the Tenants' relationship. Despite these instructions to correspond in writing, SH failed to contact the Landlord until September 22nd and, even then, she failed to express any concerns with the agreement or tell the Landlord that her husband forced her to sign the agreement. In short, SH's lack of communication with the Landlord fails to support her testimony that her husband forced her to sign the agreement to terminate the tenancy. This means that SH entered the agreement freely and this agreement must be enforced.
8. In considering all the circumstances, I have also considered that the Landlord attempted to assist SH with finding a new place to live, but SH says she refused this assistance because she did not like the neighbourhoods the Landlord suggested to her. There is no evidence before me to suggest that SH told the Landlord at this point that she had been forced to sign the agreement or that she was reluctant to end the tenancy. Instead, SH says she refused the Landlord's help because she did not prefer to live in the neighbourhoods they suggested. SH's testimony on this point fails to establish that her husband forced her to sign the agreement to terminate the tenancy. As SH entered into a valid agreement to terminate the tenancy, I find that it would be unfair in all the circumstances to set aside the eviction order.
9. I would also note that, in her testimony, SH explained that she completely understood the Landlord's instructions that she would have to re-apply to rent the unit once her husband moved out. However, the only explanation SH provided regarding why she failed to follow this procedure is that she found it to be "unfair". SH says that she is making a solid and



predictable monthly income and she would have no problem paying the monthly rent on her own. However, instead of following the Landlord's instructions to submit an application for the unit, SH says she attempted to call the Landlord to have the lease transferred solely to her name. This suggests to me that SH knew the proper procedure, but simply failed to follow it even though she had no valid reason for doing so. Not only is this circumstance not a valid reason to find the agreement to be invalid, but it is not a circumstance that would justify setting aside the eviction order.

10. Regarding the Landlord's circumstances, I have considered that, once the Tenants signed the agreement to terminate the tenancy, and when SH failed to submit an application for the rental unit, the Landlord acted on the agreement and re-rented the unit. When SH failed to move out on the agreed upon date, the Landlord was forced to temporarily house the new tenants in a spare unit in the complex and also move other residents to make this possible. The Landlord says the new tenants are not pleased about this arrangement as the unit where they are currently housed is not the unit they viewed and agreed to rent.
11. Based on the evidence before me, and after considering all the circumstances, I find that it would be unfair to set aside the eviction order. I am not satisfied that SH was forced to sign the agreement. Also, SH refused assistance from the Landlord to find alternate accommodations and then caused new tenants to be forced to live in temporary accommodations because she failed to adhere to the agreement. For all of these reasons, I find that it would be unfair to grant the Tenant's motion and set aside the eviction order. The Tenant's motion must therefore be denied.

Lifting the Stay

12. As the Tenant's motion is denied, the next issue before me is when to lift the stay of the eviction order.
13. In this regard, I have considered the Landlord's willingness to delay lifting the stay until January 31, 2023, in order to account for the holiday period. I have also considered that the tenancy was originally set to terminate on September 30, 2022, which means the Tenant has already had a delay of over 5 months to find alternate accommodations.
14. As the Tenant has a teenaged son living in the unit, and as this is a moderately lengthy tenancy, and as the new tenants are already in temporary housing, I find that an additional short delay of 2 weeks would not be unfair in these circumstances. This means that the stay of the eviction order will be lifted on February 21, 2023.
15. This order contains all the reasons within it and no further reasons will be issued.

It is ordered that:

1. The Tenants' motion to set aside Order LTB-L-064784-22 issued on November 18, 2022, is denied.



2. The stay of order LTB-L-064784-22 is lifted on February 21, 2023.
3. Order LTB-L-064784-22 remains unchanged.

February 6, 2023
Date Issued

Laura Hartslief
Member, Landlord and Tenant Board

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If you have any questions about this order, call 416-645-8080 or toll free at 1-888-332-3234.